

PR#9833

GUNTER, TEENA

10/29/2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,

Defendants.

VIDEOTAPED DEPOSITION OF TEENA GUNTER
TAKEN ON BEHALF OF THE DEFENDANTS
ON OCTOBER 29, 2008, BEGINNING AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

J. Trevor Hammons
Daniel Lennington, Attorneys at Law
OKLAHOMA ATTORNEY GENERAL OFFICE
313 Northeast 21st
Oklahoma City, Oklahoma 73105
405-522-2801
thammons@oag.state.ok.us
dlennington@oag.state.ok.us

On behalf of THE OKLAHOMA DEPARTMENT OF AGRICULTURE,
FOOD & FORESTRY:

Larry H. Harden, Attorney at Law
OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD & FORESTRY
P.O. Box 528804
Oklahoma City, Oklahoma 73152
405-522-5997
larry.harden@oda.state.ok.us

(APPEARANCES CONTINUED ON PAGE 2)

REPORTED BY: Laura L. Robertson, CSR, RPR

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1 (APPEARANCES CONTINUED)
2 On behalf of the DEFENDANT-PETERSON FARMS, INC.:
Philip Hixon, Attorney at Law
3 MCDANIEL, HIXON, LONGWELL & ACORD
320 South Boston, Suite 700
4 Tulsa, Oklahoma 74103
918-382-9200
5 phixon@jpm-law.com

6 On behalf of the DEFENDANT-SIMMONS FOODS, INC.:
Christopher R. Smiley, Attorney at Law
7 CONNER & WINTERS
211 East Dickson Street
8 Fayetteville, Arkansas 72701
479-582-5711
9 csmiley@cwlaw.com

10 On behalf of the DEFENDANT-GEORGE'S, INC. AND GEORGE'S
FARMS, INC.:
11 K.C. Tucker, Attorney at Law
THE BASSETT LAW FIRM
12 221 North College Avenue
Fayetteville, Arkansas 72702
13 479-521-9996
kctucker@bassettlawfirm.com
14
15 On behalf of the DEFENDANT-CARGILL:
Leslie Southerland, Attorney at Law
RHODES, HIERONYMUS, JONES, TUCKER & GABLE
16 100 West 5th, Suite 400
Tulsa, Oklahoma 74103
17 918-582-1173
ljsoutherland@rhodesokla.com
18
19 On behalf of the DEFENDANT-CAL-MAINE FOODS:
Robert Sanders, Attorney at Law
YOUNG & WILLIAMS
20 210 East Capitol, Suite 2000
Jackson, Mississippi 39225
21 601-360-9013
rsanders@youngwilliams.com
22
23
24
25

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(APPEARANCES CONTINUED)

On behalf of the DEFENDANT-TYSON FOODS, TYSON CHICKEN,
TYSON POULTRY AND COBB-VANTRESS, INC.:

Ryan Burns, Attorney at Law

KUTAK, ROCK

214 West Dickson

Fayetteville, Arkansas 72701

479-973-4200

ryan.burns@kutakrock.com

ALSO PRESENT: Stephen Carns, Videographer

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STIPULATIONS

It is stipulated that the deposition of
TEENA GUNTER may be taken on the OCTOBER 29, 2008,
pursuant to agreement and in accordance with the
Oklahoma Discovery Code before Laura L. Robertson,
CSR, RPR.

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1 MR. VIDEOGRAPHER: This is the videotape
2 deposition of Teena Gunter, taken on behalf of the
3 defendant, in the matter of State of Oklahoma vs.
4 Tyson Foods, Case Number 05-CV-0329-GKF-SAJ.

5 It is being held at the Attorney General's
6 office at 313 Northeast 21st Street in Oklahoma City,
7 Oklahoma, on the 29th of December, 2008. On record at
8 9:05 a.m. Counsel, please state your appearance for
9 the record.

10 MR. LENNINGTON: Dan Lennington for the
11 State of Oklahoma.

12 MR. HAMMONS: Trevor Hammons for the State
13 of Oklahoma.

14 MR. HIXON: Philip Hixon for Peterson Farms.

15 MR. BURNS: Ryan Burns for the Tyson
16 defendants and Cobb-Vantress.

17 MS. TUCKER: K.C. Tucker for the George's
18 entities.

19 MR. VIDEOGRAPHER: On the phone.

20 MR. SANDERS: Bob Sanders for Cal-Maine
21 defendants.

22 MS. SOUTHERLAND: Leslie Southerland for
23 Cargill.

24 WHEREUPON,

25 TEENA GUNTER,

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1 after having been first duly sworn, deposes and says
2 in reply to the questions propounded as follows,
3 to-wit:

4 DIRECT EXAMINATION

5 BY MR. HIXON:

6 Q. Good morning, Ms. Gunter, we are back. Just
7 so we will have some continuity from our last session,
8 we had, or I had offered into the last sessions of the
9 deposition Exhibits 1, 2, 3, 4, 5, 6, 7, 8-A, 8-B,
10 8-C, 10, 11, 12, 17, 18, 19 and 20, which are all
11 contained in that folder, and I don't know that we
12 will need any of those, but just in case, they are
13 there.

14 A. Okay.

15 Q. For your benefit. And again for the record,
16 I think Exhibit 1 was the deposition notice, and it is
17 my understanding that you're here as representative of
18 the state of Oklahoma for the poultry topics that are
19 identified in the notice; is that correct?

20 A. Yes, sir.

21 Q. Okay. Can you tell me what the Oklahoma
22 Water Quality Monitoring Council is?

23 A. The Oklahoma Water Quality Monitoring
24 Council?

25 Q. Uh-huh.

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1 **A.** Is one of many groups that the state of
2 Oklahoma has -- the purpose of that one, I believe it
3 was created probably '99-ish or 2000, I'm not positive
4 about that.

5 And the purpose of it was to bring all of
6 the agencies together as, there was some discussion
7 that agencies were not coordinated on monitoring, in
8 other words, DEQ was monitoring a stream and
9 Conservation Commission was monitoring a stream at the
10 same time.

11 And so they wanted to get this group
12 together so that the people that were doing that
13 monitoring could discuss and more carefully coordinate
14 the types of monitoring that were going to be done,
15 and where and make sure we weren't duplicating effort.

16 **Q.** Is that group still active?

17 **A.** As far as I know, it is but I have not
18 attended any meetings in a number of years. My duties
19 changed at some point.

20 **Q.** And do you know if they have the
21 responsibility in the Illinois River Watershed?

22 **A.** They have responsibilities for coordinating
23 monitoring the entire state.

24 **Q.** Okay. Including the Illinois River
25 Watershed?

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1 A. Yes, sir.

2 Q. Okay. And would any of the monitoring done
3 by this council, would that be done by the individual
4 agencies or would this council itself maintain records
5 pertaining to any sampling or monitoring programs?

6 A. I don't believe the council would be the one
7 that maintains the records. Each agency would send a
8 representative saying this is what we are doing.

9 Q. Okay.

10 A. But I don't recall that they kept those
11 types -- did anything coordinated actually as the
12 group. It was more just to keep everyone informed.

13 Q. Simply just coordinating the various
14 activities of the various agencies that were
15 responsible for monitoring water quality?

16 A. Yes.

17 Q. Okay. Before we get into the complaints, I
18 have a couple of just general questions. I'm going to
19 make a statement and I'm going to ask you if you agree
20 or disagree with this, and if I need to repeat the
21 statement, please just have me repeat it.

22 The statement is your animal waste
23 management plan will include particular practices to
24 ensure you do not have runoff from land application
25 sites to water waste surrounding your facility. Do

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1 you agree with that statement?

2 A. What is the context? I guess I'm not
3 following what the context is. You say your, and --

4 Q. Well, let me get your background. You had
5 testified last time that you presented some of the
6 educational requirements required under the Registered
7 Poultry Feeding Operations Act?

8 A. Yes.

9 Q. We have a copy of those materials and this
10 statement appears in those materials.

11 A. Okay.

12 Q. This is being presented to I think our
13 Farmer Jones is who we talked about last time, so it
14 is being represented to people who are subject to the
15 Registered Poultry Feeding Operations Act as part of
16 their nine hour education requirements.

17 A. And these are my statements from those?

18 Q. I believe that statement is your statement.

19 A. Okay. So my context is I'm speaking to
20 growers?

21 Q. Correct.

22 A. Okay. And then could you repeat it.

23 Q. Yes. Your animal waste management plan will
24 include particular practices to ensure you do not have
25 runoff from land application sites to water waste

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1 surrounding your facility.

2 A. Yes, I agree.

3 Q. You agree with that statement, okay. I have
4 got another statement that says paraphrase, and I
5 don't believe that this was your statement, but it did
6 appear in the nine hours of the educational
7 requirements.

8 Do you agree that under Oklahoma law litter
9 should be applied in accordance with the NRCS
10 standards unless ODAFF specifies otherwise?

11 A. No, not necessarily completely, I don't.

12 Q. Okay. So if that statement appears in the
13 educational requirements, you wouldn't agree with
14 that?

15 A. It would need further explanation.

16 Q. What further explanation would it require?

17 A. If there are soil tests and their litter
18 test specify a different standard, then you wouldn't
19 follow the NRCS straight, you would have to adjust it
20 based on that, because your waste management plan may
21 say one rate but it was based on earlier soil tests.

22 So as you go, you would need to adjust it
23 accordingly.

24 Q. Okay. Are those the soil tests, litter
25 tests not taken into account in the NRCS standards?

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1 **A.** They are, but if you're in a nutrient
2 limited watershed you get annual soil tests and litter
3 tests. So the plan is good for six years but the
4 litter test you're supposed to get annually and adjust
5 accordingly.

6 **Q.** Would you agree that nutrients from manure
7 are the same as nutrients from commercial fertilizer?

8 MR. LENNINGTON: Objection, vague.

9 MR. HIXON: It is in the educational
10 materials.

11 THE WITNESS: Are you saying are some of the
12 constituents and some of the nutrients available in
13 manure and commercial fertilizers are similar?

14 **Q.** (BY MR. HIXON) I'm simply asking whether
15 the nutrients in manure are the same as the nutrients
16 in commercial fertilizer?

17 **A.** They wouldn't be precisely the same. There
18 would be similar constituents, for example, nitrogen
19 or phosphorous may be similar.

20 **Q.** And would there be similar water quality
21 concerns between the use of poultry litter and
22 commercial fertilizer?

23 **A.** There is certainly the potential for
24 concerns on any type of application of nutrients.

25 **Q.** If a facility which is subject to the

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1 Registered Poultry Feeding Operation Act uses
2 commercial fertilizer and there is a runoff of, let's
3 say phosphorous, would that be a violation of the zero
4 discharge standard that we discussed last time?

5 MR. LENNINGTON: Object to the form.

6 THE WITNESS: You're mixing and matching,
7 because the commercial fertilizer is a separate
8 program. Our fertilizer program is totally separate.
9 There are other things that deal with runoff from
10 those facilities or from that kind of a circumstance.

11 There is a contamination of fertilizer
12 application, and I mean commercial fertilizer
13 application, that would be dealt with through our
14 fertilizer program.

15 Q. (BY MR. HIXON) Well, if you would answer
16 the question that I asked. If there is a Registered
17 Poultry Feeding Operation Act that's registered under
18 the act?

19 A. Yes.

20 Q. And the individual who operates that
21 facility uses commercial fertilizer and there is a
22 runoff from the commercial fertilizer, is that a
23 violation of the Registered Poultry Feeding Operations
24 Act? That's a yes or no.

25 A. Do you mind if I look at my statute?

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1 Q. Sure.

2 A. I want to clarify something in my head.

3 So do you mind repeating your question so I
4 make sure I answer it.

5 Q. Okay. We have got a Registered Poultry
6 Feeding Operation, and the person that operates the
7 facility applies commercial fertilizer, and there is a
8 runoff of P from the commercial fertilizer. Is that a
9 violation of the Registered Poultry Feeding Operation
10 Act and the zero discharge standard that we had
11 discussed last time?

12 A. If it is only commercial fertilizer that
13 runs off, and it is not on a field that would have it
14 commingled with poultry waste, then I believe that the
15 poultry act only refers to poultry waste throughout
16 the BMPs, et cetera.

17 So commercial fertilizer doesn't fit the
18 definition of poultry waste.

19 Q. So it would not be a violation of the
20 Registered Poultry Feeding Operation Act?

21 A. No, but it would be a violation of other
22 Department of Agriculture statutes.

23 Q. Is there a zero discharge standard that
24 applies to commercial fertilizer?

25 A. There is a provision in Title 2 that is

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1 Title 2 Section 2-18.1, which is our, I guess our
2 pollution statute. You can't cause pollution. And a
3 runoff event from a commercial fertilizer would fit
4 the criteria for that, and we would proceed under that
5 provision, probably.

6 Q. And that wasn't my question precisely. I'm
7 asking is there a zero discharge standard for the use
8 of commercial fertilizer?

9 A. I didn't review the commercial fertilizer
10 statutes in preparation for this. It wasn't a part of
11 the 30(b)(6), I don't think. So I haven't reviewed
12 that so I couldn't possibly answer that particular
13 question in that way based on the Commercial
14 Fertilizer Law.

15 I can say that Title 2, Section 2-18.1 would
16 cover it, and if there was a discharge, that it would
17 be considered a violation.

18 Q. Okay. A discharge at what point, what
19 amount?

20 A. If there is runoff, it is going to be, any
21 addition to the stream of nutrients from that site
22 would be a pollutant -- a polluting event, because it
23 adds to the nutrient level of that stream.

24 Q. Okay. It is my recollection that this
25 2-18.1 also requires ODAFF to take action against an

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1 entity if they determine that there's been pollution;
2 is that correct?

3 MR. LENNINGTON: Object to the form.

4 THE WITNESS: It is as any of our statutory
5 provisions are, we have authority to take action in
6 that event.

7 (Defendant's Exhibit 9 marked for
8 identification)

9 Q. (BY MR. HIXON) I'm going to hand you what's
10 marked as Exhibit 9 to your deposition. And this is
11 just a compilation of statutes that I pulled off of
12 OSCN. I believe the first one here is Title 2,
13 Section 2-18.1, which is I believe the provision that
14 we are talking about; is that correct?

15 A. Yes, it is.

16 Q. If you could read to me the subsection (b).

17 A. Read it out loud?

18 Q. Read it out loud, please?

19 A. "If the State Board of Agriculture finds
20 that any of the air, land or waters of the state which
21 are subject to the jurisdiction of the Oklahoma
22 Department of Agriculture Food and Forestry pursuant
23 to the Oklahoma Environmental Quality Act have been or
24 are being polluted, the board shall make an order
25 requiring that the pollution cease within a time

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1 period determined by the department, or require a
2 manner of treatment or of disposition of the waste or
3 other polluting material as may be in the judgment of
4 the board be necessary to prevent further pollution.
5 In addition, the board may assess an administrative
6 penalty pursuant to Section 2-18 of this title. The
7 person to whom the order is directed shall fully
8 comply with the order of the board and pay any fine
9 and costs assessed."

10 Q. Can you generally describe for us what the
11 procedure is that would result in the order or
12 penalties that are described here in this section,
13 subsection (b)?

14 A. The typical method for us to deal with
15 something like this that may come up is we would send
16 a letter of warning to the individual, after an
17 inspection. We would perform an inspection and based
18 upon that inspection, if these types of -- if some
19 type of a pollution event was noted, then we would put
20 together a letter of warning, and that's usually from
21 the division.

22 That letter of warning is going to say stop
23 and correct within 30 days. And if the -- in some
24 cases we don't even have to give them 30 days if it is
25 a public health issue, if it is something to that

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1 effect.

2 But the -- then in that, we would tell them
3 what they need to do, get it taken care of. If the
4 violation had already happened, the next step
5 potentially, depending on if they clean it up, and it
6 is simple and we move on, then that may be the end of
7 it. But the next step would be even if they clean it
8 up, if it is a large enough pollution event or if it
9 warrants, we would then go through the process of
10 going through our legal division, our office of
11 general counsel, and issue a notice of violation on
12 it, which would assess an administrative fine, as well
13 as if there were particularized things we needed to do
14 in that case, for example, of additional clean-up
15 spelled out, that sort of thing.

16 And then that's the formal procedure to
17 start any hearing, administrative hearing processes we
18 may have on the violation.

19 Q. Okay. It is my understanding that the first
20 step in this process then would be an inspection?

21 MR. LENNINGTON: Object to the form. What
22 is this process?

23 MR. HIXON: This process that she just
24 described, which was my prior question.

25 MR. LENNINGTON: Go ahead.

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1 THE WITNESS: The -- typically our --
2 everything we have from a regulatory standpoint, there
3 may be a complaint that leads to the inspection, or an
4 individual could be out there for another reason and
5 also notes that there is another problem at the
6 facility.

7 So, yes, it would be usually one of our
8 inspectors that notes the problem.

9 Q. (BY MR. HIXON) Okay. Are there any
10 inspections of users of commercial fertilizer?

11 A. On a complaint basis, yes. And on other
12 bases, we have had circumstances where our employees,
13 our inspectors were on-site for other matters and
14 identified them. Similar to the Poultry Act, but they
15 don't have annual inspections, because there's not
16 necessarily a record of every single person that
17 purchases commercial fertilizer.

18 Q. Okay. This subsection (b), would this
19 apply, this process apply to a violation of the
20 Registered Poultry Feeding Operations Act?

21 A. Typically violations of the Registered
22 Poultry Feeding Operations Act are going to be dealt
23 with through the administrative processes spelled out
24 in that. It has its own. It is still the same
25 process that we would use from letter of warning to an

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1 NOV type of circumstance, but they have their own
2 enforcement, it has its own enforcement mechanism.

3 So typically they would be dealt with that
4 way. Now, there can be times when the inspector goes
5 to the site and identifies problems that are not
6 necessarily covered by the Poultry Feeding Operations
7 Act, but are indeed a problem that may be covered by
8 this 2-18.1. And in that event, then we may start
9 separate action.

10 So that's a possibility. But typically,
11 that's going to be handled through the Poultry Waste
12 Act.

13 Q. And the explanation that you just gave,
14 would that be the same answer for a violation of a
15 CAFO Act?

16 A. Yes, it has its own enforcement authority as
17 well.

18 Q. Okay. Different question. We have got the
19 same Registered Poultry Feeding Operations Act or
20 operation, and we have got a field where there's not
21 been any litter, any commercial fertilizer that's been
22 applied.

23 Would you agree with me that it is possible
24 that this field where no fertilizer has been applied,
25 there's potential for runoff of phosphorous or

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1 nitrogen or any number of nutrients?

2 MR. LENNINGTON: Objection, outside the
3 scope of the deposition. If you know the answer, go
4 ahead.

5 THE WITNESS: This field you said it has no
6 commercial or poultry waste or any type, is it being
7 grazed by cattle?

8 Q. (BY MR. HIXON) It -- does it matter?

9 A. Well, is there grass growing on it?

10 Q. It is a field.

11 A. Well, all of those things make a difference.
12 I mean, if there is grass growing on it, then more
13 likely than not, then there is probably not going to
14 be much of a pollution issue from it, because you have
15 got the grass to take up any nutrients that might be
16 available on that property.

17 Q. Okay. So you're saying it is not possible
18 to have runoff from a field where commercial
19 fertilizer or litter has not been applied?

20 MR. LENNINGTON: Objection, outside the
21 scope.

22 THE WITNESS: That's not what I said.

23 Q. (BY MR. HIXON) I'm just asking you some
24 question. Is it possible to have a runoff of
25 nutrients from a field where litter or commercial

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1 fertilizer has not been applied, that's a yes or no
2 question?

3 MR. LENNINGTON: Objection, outside the
4 scope of deposition. She's not here to answer
5 questions about, you know, scientific issues that
6 you're posing in a hypothetical question.

7 MR. HIXON: Are you instructing her not to
8 answer?

9 MR. LENNINGTON: No, I'm just getting my
10 objection on the record regarding the vagueness of
11 your question about hypothetical field that may or may
12 not have cattle, that may or may not have grass, and
13 that may or may not have a thousand different factors.

14 MR. HIXON: I didn't say anything about
15 cattle.

16 MR. LENNINGTON: She asked you about cattle
17 and you wouldn't answer the question.

18 MR. HIXON: I'm not the one being deposed.

19 MR. LENNINGTON: I'm saying that your
20 question is vague and it is not capable of being
21 answered. So go ahead if you know the answer.

22 Q. (BY MR. HIXON) It is a yes or no question.

23 A. It is not a yes or no question. Every field
24 is different. And I'm -- if it's eroded --

25 Q. Is it possible is a yes or no question.

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1 A. Is it possible that there is runoff from a
2 field?

3 Q. Yes.

4 A. I don't know what's been there historically,
5 are you talking about 50 years, are you talking about
6 a thousand year, I don't know, there is no way to
7 answer that.

8 Q. Let's assume there is runoff from this
9 field.

10 A. Okay.

11 Q. Is that a violation of the Registered
12 Poultry Feeding Operation Act?

13 A. What is in the runoff?

14 Q. Nutrients.

15 A. What nutrients?

16 Q. What nutrients are regulated by the
17 Registered Poultry Feeding Operations Act?

18 A. You didn't say this was a poultry operation,
19 so it wouldn't be covered by this act.

20 Q. I prefaced the question with Registered
21 Poultry Feeding Operations Act and we had a field
22 where litter and commercial fertilizer had not been
23 used?

24 A. Then it would not be a Registered Poultry
25 Feeding Operation. It is not covered. If it has not

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1 got poultry litter, it is not listed as a land ap site
2 on the random waste management plan and if it is not
3 the farm itself where barns are located, it wouldn't
4 be concerns by the act.

5 Q. And why wouldn't it be covered by the act?

6 A. It is not a poultry feeding operation. That
7 includes the land application sites and the facility
8 itself.

9 Q. Okay. So your testimony is it would not be
10 a violation of the Registered Poultry Feeding
11 Operations Act; is that correct?

12 MR. LENNINGTON: Object to the form.

13 THE WITNESS: Poultry Feeding Operations Act
14 doesn't have anything to do with a random field.

15 Q. (BY MR. HIXON) And if that's the case, then
16 it wouldn't be a violation of the Registered Poultry
17 Feeding Operations Act; is that correct?

18 A. Of this act, that's correct.

19 Q. Is there any zero discharge standard for an
20 agricultural field that has runoff where no litter or
21 commercial fertilizer has been applied?

22 A. Does it result in pollution? If there is
23 runoff with constituents in it that result in
24 pollution, there is something wrong at that site and
25 we would look at it through this 2-18.1 provision.

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1 Q. What constituents would result in an action
2 under this 2-18.1?

3 A. What is on it? I mean, it depends on what
4 is there.

5 Q. Nutrients?

6 A. I mean, if you have got a runoff -- which
7 nutrient would you like to talk about this time? I
8 mean, nutrients, which one?

9 Q. We spent about seven hours the last
10 deposition trying to get an answer to that question,
11 and it was never really identified as to what the
12 standards were. And I'm still lost in that concept.

13 I'm asking if there is a runoff of
14 nutrients, is it a violation, would it be something
15 that would be subject to this 2-18.1?

16 A. Certainly can be.

17 Q. What nutrients would result in an action of
18 this 2-18.1?

19 A. Do you have your Title 27A here, by chance?

20 MR. LENNINGTON: I can give her mine.

21 THE WITNESS: Definition section up front.

22 MR. HIXON: Do you want to take a break and
23 let him go get that?

24 (Short break)

25 Q. (BY MR. HIXON) Before we took our little

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1 break, we were talking about the nutrients, I had
2 asked you a question what nutrients would result in an
3 action under this 2-18.1.

4 A. The term pollutant in Title 27-A is fairly
5 broad. It is direct spoil, solid waste, incinerator
6 residue, sewage, garbage, sewage sludge, munitions,
7 chemical waste, biological materials, radioactive
8 materials, heat, wrecked or discarded equipment, rock,
9 sand, cellar dirt and industrial municipal and
10 agribusiness waste.

11 So it could be virtually anything under the
12 definition of pollutant.

13 Q. Okay. What nutrients though would fall
14 under that definition of pollutant?

15 A. Nutrients could include sewage sludge, any
16 industrial waste, municipal waste, agribusiness
17 waste --

18 Q. We are talking about runoff from a field.

19 A. Right.

20 Q. What nutrients that run off from the field
21 would fall under that definition of pollutants?

22 A. You're talking about a field that has some
23 runoff; correct, and nutrients are going somewhere.

24 Q. Correct.

25 A. So therefore something has got to be on it

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1 somewhere. I don't have any idea what has been put on
2 it, so I'm giving you the answer of sewage sludge,
3 because you only mentioned fertilizer, commercial
4 fertilizer or poultry waste. Agribusiness waste could
5 be something else that was historically stored at the
6 site.

7 There is a myriad of things that could come
8 off of that, and it doesn't -- I mean, I'm here to
9 talk about poultry waste, but I'm trying to give you
10 the best answer I can to the question.

11 Q. Well, move to strike that as nonresponsive.
12 We are talking about nutrients.

13 A. Yes, sir.

14 Q. Is sewer sludge a nutrient?

15 A. It has nutrients in it.

16 Q. Let's do this. If there is runoff of
17 phosphorous from the field, would that result in a
18 action under this 2-18.1?

19 A. It could, yes.

20 Q. If there is a runoff of nitrogen, would that
21 result in an action under this 2-18.1?

22 A. It certainly can.

23 Q. If there is a runoff of arsenic would that
24 result in an action under this 2-18.1?

25 A. That's spooky.

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1 Q. I'm sorry?

2 A. That's spooky if there is a runoff are
3 arsenic from a field that you said hypothetically
4 hasn't had anything on it. I mean any pollutant that
5 runs off of it if it's within our jurisdictional
6 authority.

7 Q. What level would be within your
8 jurisdictional authority to initiate an action in
9 2-18.1?

10 A. I have got to look at the source of it. The
11 source of it, I mean we are a state environmental
12 agency. We have very specific authority for Title
13 27A, section 1-3-101 gives us very specific authority,
14 point source discharges, non-point source --

15 Q. I'm going to interrupt you, because that's
16 nonresponsive to the question I asked. I asked at
17 what level that runoff of these three nutrients that
18 we've talked about --

19 A. Is arsenic a nutrient?

20 Q. I think that's debatable.

21 A. Okay.

22 Q. At what level of runoff would ODAFF be
23 authorized to initiate an action under this 2-18.1 or
24 I will just stick to 2-18.1.

25 A. Of arsenic?

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1 Q. We have talked about three nutrients, any of
2 the three nutrients or any other nutrient?

3 A. Well, I don't know anything about arsenic
4 personally. I mean, I didn't prepare for anything
5 other than constituents of poultry waste. I know it
6 is a constituent, it can be a constituent of poultry
7 waste, but I do not know anything beyond that about
8 its behavior or anything else.

9 Q. Okay. Let's talk about poultry litter. If
10 it is a runoff, there is a runoff of arsenic from
11 poultry litter, at what level would ODAFF had
12 authorization to initiate an action under 2-18.1?

13 A. It doesn't take a level. It is a zero
14 discharge requirement. If there is any runoff of
15 poultry waste that can -- that's constituents of it as
16 well, it is actionable.

17 Q. Okay. Is poultry litter sampled for arsenic
18 under the Registered Poultry Feeding Operations Act?

19 A. Not for land application purposes by the
20 grower, the grower is going to be sampling the soil
21 and the litter for agronomic rate determination of
22 what to put on the field in compliance with his waste
23 management plan. And arsenic is not one of the
24 constituents he routinely would sample for.

25 Q. And then how would the violation -- how

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1 would that be something ODAFF would well, how would
2 the violation I guess, if it is not something that's
3 tracked, how would ODAFF know whether there was a
4 violation?

5 A. If there is a runoff, there is a violation.
6 I don't have to look at what is in the runoff beyond
7 that, if it is a field that contained poultry waste
8 and we can identify that there is a runoff from any of
9 the constituents that we need to deal with, then it is
10 a violation.

11 Q. Okay. And any constituents that we need to
12 deal with that you just -- what are these
13 constituents?

14 A. Primarily we sample for nitrogen and
15 phosphorous, and also potassium, I think is one of the
16 soil sampling criteria.

17 Q. Do you sample for arsenic?

18 A. No, sir, not typically.

19 Q. Do you sample for zinc?

20 A. Not typically. We are capable of doing so.

21 Q. Do you sample for copper?

22 A. Not typically.

23 Q. Do you sample for pathogens?

24 A. On occasion, yes.

25 Q. Do you sample for hormones?

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1 A. Not frequently, no.

2 Q. Would those items, arsenic, zinc, copper,
3 hormones, pathogens, are they something that's tracked
4 under the Registered Poultry Feeding Operations Act?

5 MR. LENNINGTON: Object to the form.

6 THE WITNESS: What do you mean tracked?

7 MR. LENNINGTON: Go ahead.

8 Q. (BY MR. HIXON) Would a runoff of those
9 substances be something that would be a violation of
10 the Registered Poultry Feeding Operations Act?

11 A. Any runoff from poultry waste identified
12 with poultry waste as the source would be a violation.

13 Q. Okay. And poultry waste as I understood it
14 from our last session was made up of a million things;
15 is that correct?

16 A. Well, maybe not quite a million. I think I
17 clarified that.

18 Q. Okay. Let's move on. Let's talk about
19 Topic 9. "Any information about complaints,
20 violations of Oklahoma Statutes or regulations or
21 notices of violations of same involving any poultry
22 integrator relating to the operations or activities
23 within the IRW."

24 How many complaints or violations have been
25 reported to the state of Oklahoma originating from a

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1 poultry integrator operation within the Illinois River
2 Watershed?

3 A. There have been a number, but I'm going to
4 caveat one thing. Delaware -- we track them by
5 county. We do not track them by watershed. So I have
6 pulled complaints from four watersheds, which -- I
7 mean not watersheds, four counties. Delaware, Adair,
8 Cherokee and Sequoyah.

9 Delaware has many complaints, but the
10 Delaware in the watershed is only the lower south
11 section there of it.

12 But there is no way to identify that within
13 our complaint database. So I have a lot of Delaware
14 complaints, but whether or not they are actually
15 related to the watershed, I can't totally identify at
16 this point. That's just a caveat to let you know
17 about my list.

18 Q. Okay.

19 A. One of the ones I can find in particular
20 is --

21 Q. Let's just go through the four counties.

22 A. Okay.

23 Q. Are there any integrator related complaints
24 or violations in Delaware County?

25 A. In Delaware County --

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1 Q. And let me define integrator.

2 A. Sure.

3 Q. I mean it is basically one of the defendants
4 in the Attorney General's lawsuits, Peterson Farms,
5 the Tyson defendants, the George's defendants, Cargill
6 defendants, Cal-Maine, Willow Brook.

7 Are there any complaints or violations noted
8 on your spreadsheet for those entities?

9 A. Well, we have -- this is way back to '98,
10 which our database started in '97. So if that gives
11 you a point of reference. This is '98, there was a
12 Hudson Farms, which was later purchased by Tyson, I
13 believe. I think they purchased all of those Hudson
14 facilities back then.

15 It was one that actually had a lagoon, the
16 complaint was there was a lagoon leaking. But it was
17 ultimately closed. There was a compliance schedule to
18 rectify that problem, and it wasn't actually closed
19 until '99. So it took a little bit of time there to
20 get that taken care of. But it was ultimately taken
21 care of.

22 Q. Okay. What are you referring to?

23 A. I am referring to the list of complaints
24 that were provided to you two weeks ago, a week ago.

25 Q. Okay.

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1 A. And this is the new list of complaints.

2 (Defendant's Exhibit 21 marked for
3 identification)

4 Q. Okay. Let me give you what's been marked as
5 Exhibit 21 to your deposition, which I think is, it is
6 the same list?

7 A. It is the same list.

8 Q. With the e-mail that Mr. Lennington sent to
9 me. And what page are you referring to?

10 A. I'm on page 1 of 8 in the Delaware County
11 poultry complaints.

12 Q. Okay. And this Hudson facility?

13 A. Is AIC 98-011.

14 Q. Okay.

15 A. The next one on the list was a Simmons Foods
16 facilities, 98-076, it was not related to runoff, it
17 was related to flies. It was identified as no
18 violation and closed.

19 Q. Okay. Let's go back to the Hudson facility.
20 Was there any runoff from the Hudson facility?

21 A. The allegation was simply lagoon leaking, so
22 it was not like from a land application event. In
23 that event there was -- it was an old lagoon, and it
24 was resulting in some leakage from the berms. And
25 that was -- and where it was located, if this is the

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1 facility I have been to and I think that it is, then
2 it was near a stream. So there was some problem
3 associated with that.

4 Q. Okay. Do you know whether this was, this
5 facility was subject to the Registered Poultry Feeding
6 Operations Act?

7 A. No, this was prior to that. This was --
8 where is my date? 3-17 of '97. No, I'm looking at
9 the wrong one. Hang on. 7-11 of '97 and we didn't
10 even -- we didn't have anything related to poultry,
11 even the Commercial Poultry Operations Rules that we
12 put together didn't come about until December of '97.

13 Q. Okay. We have got the Hudson facility, the
14 Simmons facility. Any other integrators in Delaware
15 County?

16 A. We have another one identified at
17 WQC-99-068. That was an anonymous complaint against
18 Simmons Foods for odor and water pollution. That one
19 actually was against the, I believe the Southwest City
20 Missouri plant.

21 Q. Okay.

22 A. Processing plant, and it was a DEQ actually
23 fined that facility, so it was a little bit odd at
24 that time. That came through in October of 1998.

25 Q. Okay. And that's outside the watershed; is

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1 that correct?

2 A. That's correct.

3 Q. Outside the Illinois River Watershed?

4 A. That's correct.

5 Q. Okay.

6 A. I have another complaint against WQC 99-126
7 and it was against George's Poultry, over application
8 of manure. That one was closed with no violations.

9 Q. So was it determined that there was no
10 overapplication of manure?

11 A. Many of these George's ones were people
12 following trucks. That they were bringing over waste
13 from Arkansas, and it was liquid waste and they
14 brought it over, but they would follow the trucks,
15 call in the complaint but by the time we got out
16 there, there was nothing to be found. And we couldn't
17 identify even the locations.

18 If you notice that particular one is
19 anonymous, so we didn't even have the ability to
20 contact the individual that made the complaint to try
21 to track down specifically where that was.

22 Q. Okay. So it is your testimony that this WQC
23 99-126 was a complaint regarding liquid manure?

24 A. Yes.

25 Q. Okay. Let's go on.

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1 A. WQC 99-154 is George's dumping litter in a
2 small area. That was a litter complaint. Again, it
3 was closed with no violations. It was a similar
4 circumstance.

5 Q. Okay. For these ones that indicate the
6 action was closed, no violation, does that mean there
7 wasn't any kind of notice of violation issued?

8 A. No administrative action was taken. That
9 means our inspector went to the site, identified what
10 he could, but didn't identify, in his report back to
11 us, it didn't indicate a violation.

12 Q. So there wouldn't have been any action taken
13 under the Registered Poultry Feeding Operations Act?

14 A. No.

15 Q. And there wouldn't have been any action
16 taken under the CAFO Act?

17 A. Not at that time, no.

18 Q. And there wouldn't have been any action
19 taken under this 2-18.1 that we talked about?

20 A. Right, it would have indicated a further
21 action was taken in the action and reason foreclosure
22 comment boxes.

23 Q. What else do we have in Delaware County?

24 MR. LENNINGTON: Are you still asking about
25 integrators, Philip?

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1 MR. HIXON: Yes, integrators.

2 THE WITNESS: I have got another one again,
3 not in the watershed, Simmons Processing Plant, we had
4 several of those. That one was referred to DEQ.

5 Q. (BY MR. HIXON) That's outside the Illinois
6 River Watershed?

7 A. That's correct.

8 Q. Okay.

9 A. WQC-03-107, we are on page 3 of 8 now. It
10 was against Tyson. The allegation again this was an
11 anonymous complaint. The allegation was possible
12 improper carcass disposal, and you will note our
13 inspector went out and there were no violations found
14 at the time of the investigation.

15 Q. Okay. So no action would have been taken
16 under the Registered Poultry Feeding Operations Act?

17 A. That's correct.

18 Q. Or any of the other acts that we have talked
19 about?

20 A. That's correct.

21 Q. Okay. What else do we have as far as
22 integrators in Delaware County?

23 A. Do you want me to mention the ones that are
24 the processing plants?

25 Q. If you know it is outside the Illinois River

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1 Watershed, we don't need to discuss it.

2 A. Okay. These are definitely outside, and I'm
3 talking about 05-214 on page 6 of 8. And there is
4 another one. There are two on that page.

5 I'm in Adair County now, page 105.

6 Q. Okay.

7 A. This was way back in '98. It was a
8 WQC98-091 against the Hudson Foods, complex number 13.
9 Again, these facilities were all purchased by Tyson.
10 And the allegation was runoff and litter, runoff of
11 litter, I guess is what they mean by that.

12 And it was also closed with no violations at
13 that time.

14 Q. Okay. So there was a determination that
15 there wasn't any runoff from this facility?

16 A. Not at that time. That's correct. Not when
17 our inspector was out there.

18 Q. Okay.

19 A. The C-05-128, these facilities were
20 originally owned by Tyson, but they were transferred
21 to Green Country Farms.

22 Q. Okay. This entry indicates that it is
23 against Green Country Farms?

24 A. Correct.

25 Q. And Steve Butler is the owner of Green

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1 Country Farms?

2 A. That's right. And the only reason I bring
3 that one up is it was originally owned by Tyson, those
4 complexes were.

5 Q. But at the time of the complaint it was not
6 owned by Tyson; is that correct?

7 A. That's correct.

8 Q. Okay. That would not be responsive. What
9 else do we have?

10 A. WQC-00-130, which is Tyson/Hudson. I'm
11 going to -- this was only related to flies, it was not
12 related to runoff or land application or anything of
13 that sort. They did complete corrective actions to
14 deal with their pest issue.

15 Q. Okay. So there is no determination of
16 runoff in this complaint?

17 A. No.

18 Q. Okay. What else do we have in the way of
19 integrators in Adair County?

20 A. There is a carcass disposal complaint
21 against Tyson's, WQC-0087, that's page 3 of 5.

22 Q. And again there was no violation found in
23 that instance?

24 A. Right. Then there -- go ahead.

25 Q. There would be no determination of runoff

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1 from that complaint?

2 A. No, not in that case, it was strictly a
3 carcass disposal complaint.

4 Q. Okay.

5 A. WQC-02-200 is the Tyson Foods Complex 11,
6 12, 13 and 14, it is license number 852. That might
7 be the same as this guy. I believe that's the same
8 facility now owned by Green Country Farms, but this
9 would have been in '02, prior to him purchasing it.

10 It is improper waste management. We went
11 out there. This particular one initiated a -- there
12 were problems identified at the location. The
13 inspector filed his report to us. We sent a letter
14 out, and this is before the system, the systematic
15 letter of warning/NOV, we were using a different
16 process at that time for enforcement matters.

17 Q. I'm sorry to interrupt you. But is this --
18 was this complaint being investigated under the
19 Registered Poultry Feeding Operations Act or --

20 A. Yes.

21 Q. Okay. Can you tell me what the improper,
22 the alleged improper waste management was?

23 A. I can pull that one. I have got Green
24 Country Farms here, and it would be in that file.
25 They threw me for a loop in their method of keeping

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1 stuff.

2 Q. If we are going to be a while, let's go off
3 of the record.

4 A. Shouldn't take too long, but, yes, that's
5 fine.

6 MR. HIXON: Let's go off of the record.

7 (Short break)

8 Q. (BY MR. HIXON) Okay. Before the break, we
9 were talking about this complaint, WQC 02-200. And
10 you were pulling up the file, and what is the alleged
11 improper waste management that was at issue there?

12 A. The complaint as taken was, "Poultry manure
13 coming out of doors of houses and spilling over onto
14 service road and surrounding areas. Poultry houses so
15 full of manure that whenever a door is opened, the
16 waste spills out. The waste has eaten out the bottom
17 of some of the doors of some of the houses."

18 Q. Okay. What action was taken on the
19 complaint?

20 A. The problems identified on May 9th of '02,
21 what we received the inspectors, he -- there was -- he
22 said that there was no evidence of any litter coming
23 out of the doors of the houses, but there was poultry
24 litter laying directly in front of approximately four
25 of the ten houses at the doors.

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1 And probably consisted his approximation was
2 100 to 150 pounds of litter directly in front of the
3 doors, they said it was from the tractors going in and
4 out, from the catching crews. He found no evidence of
5 the poultry houses being so full that when a door was
6 open litter would come out. He picked one at random
7 just to open the doors and come through, he went
8 through the biosecurity ahead of time.

9 Q. So this complaint, it is dealing with litter
10 that's still in the house or near the house?

11 A. Around the houses, exactly.

12 Q. Okay. So there's not been any land
13 application on a field?

14 A. No. That was not the allegation in this
15 case, that's correct.

16 Q. Okay. Was there any determination that
17 there was any runoff of that poultry litter?

18 A. No. They were asked to clean up the litter
19 that was laying outside around the doorways, and they
20 did that when we did our follow-up inspection on that
21 facility.

22 Q. But there was no determination that there
23 was a discharge or runoff --

24 A. No, there was not.

25 Q. -- into the waters of the Illinois River

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1 Watershed?

2 A. That's correct.

3 Q. Let's move on to the next one.

4 A. Another one right after that was WQC 02-213
5 but again this one was a flies complaint and it was no
6 violation, based on our inspection.

7 Q. So no determination of runoff in that case?

8 A. That's right.

9 Q. What is the next one?

10 A. WQC 01-137 at the bottom of that 3 of 5
11 pages on George's. The allegation is runoff spreading
12 liquid litter in the rain. It was closed. And it
13 actually doesn't say no violations on that now that I
14 look at it. So that one would have been one that
15 there may have been something identified, but it was
16 '01 and our database, we didn't put enough info
17 sometimes in our database at that time. We are better
18 about it now, obviously.

19 Q. Where was the litter being spread?

20 A. Typically, and I'm getting my exact file
21 number here. Typically you're going to see that one
22 being -- those George's complaints is, and I have got
23 it right here, as a matter of fact, are going to be
24 within the watershed, but again, a concern about not
25 necessarily a facility.

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1 So it is not -- it is associated with a land
2 application site. That's all they said on their
3 complaint was spreading liquid litter in the rain.
4 Investigation report, it was over on George's cattle
5 farm and the statement was that George's Poultry owns
6 approximately 827 acres east of Mr. Chapman's 180
7 acres, he's the complainant.

8 When our investigator went out, the -- there
9 was litter being spread at that time. It was not
10 raining at the time of the investigation. The
11 allegation was that it -- they were doing it in the
12 rain.

13 He noted four litter trucks during that time
14 period, 3,000 gallon tanks, so it would be liquid
15 again. And he identified the odors on that. And in
16 his investigation, his records, George's records
17 actually indicated that no litter was spread over the
18 weekend, which is when the rain had occurred.

19 So two other trucks had got stuck at the
20 site, in the mud, but they had not gone until later.

21 **Q.** Was there any determination of runoff as a
22 result of this?

23 **A.** Does not look like he identified specific
24 runoff. He does note that at the time of the actual
25 applications, the field were saturated enough in some

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1 places to get the litter truck stuck, but he says the
2 litter being spread is within the recommended limits
3 of the soil test and is several hundred feet away from
4 Copple Creek.

5 So he was reminded to take care -- to be
6 careful on the saturated ground. And so the
7 allegation was that it was while it was raining.
8 There was no indication of that, and as a result the
9 complaint was closed, with no violations identified
10 other than recommendations to be -- to watch the
11 saturated conditions.

12 Q. Last time we talked about the, quote,
13 unquote finger printing that ODAFF does sampling
14 upstream and downstream and comparing --

15 A. Right.

16 Q. -- the two samples to determine whether
17 there was any runoff. Can you tell me whether that
18 action was taken on this complaint WQC 01-137?

19 A. From the file it doesn't appear we took any
20 water or soil samples at the location.

21 Q. So there wasn't any runoff determined on
22 this complaint; correct?

23 A. That's correct.

24 Q. Okay. What do we have -- what's next in
25 Adair County?

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1 **A.** There is an allegation on WQC-03-052, this
2 is on page 4 of 5 against George's. Improper waste
3 disposal, and the -- and I have that one pulled.
4 Improper waste disposal. Action was taken was it was
5 referred for enforcement action. And they were fined
6 \$200 on December 19th of '02.

7 **Q.** Okay. What was the enforcement action that
8 was taken?

9 **A.** It was resolved through what we call a PIRC,
10 a proposed informal resolution of complaint. Meaning
11 it was an agreed to settlement on that case. The
12 identified violation was failure to use methods
13 suitable and safe for the land application site.
14 Failure to perform work according to minimum standards
15 and failure to ensure employees and other applicators
16 are properly trained regarding poultry waste handling
17 and application.

18 This was a violation of the Poultry Waste
19 Applicators Certification Act.

20 **Q.** Was there any determination of any runoff
21 from this event?

22 **A.** Let me go to the inspection report in here.
23 Let's see. Yes, the allegation was, well, and
24 actually it wasn't just an allegation, it was
25 identified that they were spreading litter on the side

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1 of a hill at a 15 percent slope, which is
2 an unapproved method resulting in runoff.

3 Q. Okay. Does the complaint itself say that
4 there was runoff? You were referring to a page there
5 when you made that statement?

6 A. I'm sorry.

7 Q. Does that page -- are you interpreting what
8 was said there?

9 A. No, I just read it from the language in the
10 letter. I know I added that results in a runoff.
11 That's what I added, is that what you're asking me?

12 Q. Yes. I'm asking if that's what the letter
13 said?

14 A. The letter says, "Spreading litter on the
15 side of a hill at a 15 percent slope, which is
16 an unapproved method."

17 Q. Can you identify the date of that letter?

18 A. Certainly. November -- no, October 18th,
19 2002 we sent this letter out to Alan Alberg of
20 Georgia's Commercial Ag. And these three items
21 were -- there were three items identified in that
22 letter as violations. The first being George's
23 renewed their poultry waste applicator license as a
24 private and not commercial, but then they were under
25 the circumstances they should have had a commercial

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1 license. Failure to obtain a soil sample, they didn't
2 do that. And then the spreading of litter on the side
3 of a hill with a 15 percent slope.

4 Q. But there is no finding of runoff?

5 A. Not in that letter, no, that's exactly
6 correct. And we did not make that note in the final
7 proposed and formal resolution of complaint. Because
8 that was a negotiated document.

9 Also in this is the response from George's
10 to our inspection, as well as the actual investigation
11 report. What more details are you interested in from
12 this one?

13 Q. I think that's sufficient.

14 A. Let me find the original complaint. This is
15 a complaint that originally was referred to us by DEQ.

16 Q. Just for the record, all of these complaints
17 that you're referring here to today and pulling out of
18 these boxes, these have been produced to the
19 defendants previously?

20 A. Yes. Yes, they have. The original
21 allegation was the complainant states that chicken
22 plant dumps waste near a creek, waste haulers in
23 parenthesis, George's bring in tanks of liquid chicken
24 litter and spray it on the property which is right
25 next to the Illinois River. And that was as taken by

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1 the -- by DEQ.

2 Q. Was there any of this upstream, downstream
3 finger printing sampling taken in this case?

4 A. Doesn't appear that we took any samples that
5 date. I don't see any reference to it in the
6 inspector's report, nor do I see any sample results in
7 the file itself.

8 Q. What other integrator complaints do we have
9 in Adair County?

10 A. There is another old one against the Hudson
11 Foods Complex in -- it is numbered 98-068, this is on
12 page 5 of 5 of the Adair County complaints and the
13 allegation was improper disposal of litter.

14 The action was closed, violations were
15 cleaned up.

16 Q. Was there any determination of runoff in
17 this case?

18 A. 98068.

19 Q. While you're looking that up, these
20 complaints against Hudson Food Complex, if it is
21 identified as Hudson Foods Complex, is it a correct
22 statement that these complexes were not owned by Tyson
23 at the time the complaint was made?

24 A. Not necessarily, because there was a period
25 of time after Tyson purchased the facilities that they

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1 continued with the Hudson name on some of them, just
2 as a naming of the facility. It was the Hudson Swine
3 Farm number 12, the Hudson Poultry Farm.

4 So not necessarily. I don't really recall
5 what year that was, but it was around the '97, '98
6 time period, I recall.

7 Q. Okay.

8 A. I don't see that file right off the bat. At
9 least it is not contained on the file list. It may be
10 in here, though. 98068. What year was that?
11 November of '97. I don't see that one right off the
12 bat. There is not any indication of runoff on the
13 complaint statements here.

14 Q. Okay.

15 A. On our database listing.

16 Q. What is our next integrator complaint?

17 A. Two in a row on George's. There is 99-095
18 followed by 99-127. They are both allegations of
19 dumping chicken waste and running in creek, dumping
20 litter during the rain.

21 Both of those were closed with no
22 violations. There was no identification of any
23 problems whenever our inspector went to the site.

24 Q. Okay. So there would be no determination of
25 runoff or discharge to the waters of the state in

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1 these cases?

2 A. Not at that time, no.

3 Q. What is our next one?

4 A. The next one is 99-140, and this one is
5 against Tyson's number 15 and number 16. And the
6 database allegation says dumping chickens/litter near
7 a creek. Probably carcass disposal, in other words.
8 But that one was also closed with no violations. We
9 identified no problems when we went out there.

10 Q. So there would be no discharge or runoff in
11 that case?

12 A. Not identified in that inspection.

13 Q. The license column?

14 A. Yes.

15 Q. What is the significance of the license
16 number?

17 A. That would have been their license number,
18 because this took place in 99- -- the complaint was
19 March 31st of '99, and we did have the Registered
20 Poultry Feeding Operations Act at that time. So this
21 facility was issued registration number, license
22 number, whatever you want to call it, 853.

23 That's no longer an active facility, because
24 those were later taken over by Green Country Farms.

25 Q. Okay. But if there is a license number --

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1 **A.** Registration number.

2 **Q.** It is the Registered Poultry Feeding
3 Operations license number?

4 **A.** Right.

5 **Q.** What is our next integrator complaint?

6 **A.** George's Poultry, CD-05-122. It was
7 improper waste management and odor. And it notes in
8 the action that it was closed with a letter of
9 warning, 3-2-05 was the date of closure.
10 Therefore -- 05122 should be in these books here.
11 Let's make sure of that.

12 MS. SOUTHERLAND: I missed the name of the
13 integrator on that one? Who was the integrator?

14 THE WITNESS: George's. It says spreading
15 litter and odor is awful. People are having to leave
16 their homes, some trucks are unmarked, but some have
17 George's Poultry on the side, they are coming from
18 Arkansas is the allegation.

19 **Q.** (BY MR. HIXON) So it is a complaint
20 regarding odor?

21 **A.** Yes, let me see if there were any other
22 allegations identified here. Turns out once we got
23 out there, it was not poultry waste, it was actually
24 swine waste from Illinois River farms that was in the
25 process of closure at that time. So it was --

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1 Q. So it is not poultry litter after all?

2 A. Not poultry litter after all. That happens.

3 Q. Why would that complaint be included in
4 poultry complaints?

5 A. This is a -- this record is made at the time
6 the complainant calls in, and it was identified as
7 poultry waste. So any actions, they don't go back in
8 and revise based on that, you would have to go to the
9 file to find out the rest of the story, I guess you
10 could say.

11 Q. Okay. And where is this information
12 maintained that are in these spreadsheets that we have
13 talked about so far today?

14 A. What do you mean where is it maintained?

15 Q. Where is it maintained by ODAFF?

16 A. Do you mean the paper or the information
17 that we gleaned this from?

18 Q. Correct, the latter.

19 A. This would be our database. We have a
20 complaints database that we log every complaint into.

21 Q. Is that limited to poultry?

22 A. No. It is -- we investigate all complaints
23 related to animal waste. So you're going to have in
24 there everything from poultry to swine to cattle to
25 dogs and cats. So it is everything related to animal

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1 waste is in this complaint database.

2 Q. Okay. The Exhibit 20 from our last session
3 had a version of these spreadsheets contained in them.
4 And we had reviewed portions of those and identified
5 to Mr. Lennington some issues with some of those
6 entries, and I understand, this is a corrected
7 spreadsheet that addressed those entries.

8 Did you verify each of the entries on these
9 sheets before you came today to ensure that they were
10 poultry complaints?

11 A. I identified what was in our database listed
12 as a poultry complaint. I did not go through each
13 file. I had them, though -- I had Sally Abbott, who
14 helped me put this together the first time as well as
15 the second time, confirm that the lines were correct
16 this time, because that was the problem before, when
17 she had sent it to Excel, the lines had gotten swapped
18 somehow. When she took it from the Access database to
19 the Excel spreadsheet.

20 And she did confirm each one of them and
21 make sure that they were accurate across the way. But
22 how our databases is listed, that's how we obtain the
23 information, is what is the original allegation.

24 Q. As far as the complaint numbers themselves,
25 would these complaint numbers be the same as the

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1 complaint numbers that were provided to us in the
2 Exhibit 20 version of this document?

3 A. I'm not sure I understand what you're
4 asking.

5 Q. Well, if I look at this WQC 98-068 that we
6 talked about, this Hudson Foods Complex, would that
7 entry be included on this, the Exhibit 20 version of
8 these sheets?

9 A. It should be, but I don't know what to what
10 total extent the lines were messed up on the
11 exportation. But when she pulled the data, she pulled
12 the poultry stuff.

13 So the way I understand it was done is all
14 of the poultry was on that sheet, but the number may
15 not have matched up with the appropriate person in
16 some cases, in a couple of locations. That the number
17 may have been here but the lines got shifted up or
18 down, and so it wouldn't have been the actual
19 information for that particular complaint.

20 Q. How was the poultry -- how are the poultry
21 complaints identified in the database and then pulled
22 for this spreadsheet?

23 A. The type listing at the top of the page
24 there, you see the 1, 2, 3, 4, 5, sixth column over.
25 Every item is identified as a type. And if it is

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1 swine, we put swine in there, if it is cattle, we put
2 cattle in there, if it is a dog, we put dog in there.
3 Mice.

4 Q. Okay. I think that may answer my question.
5 I'm looking at the Exhibit 20 version and it doesn't
6 appear that type column is included in this.

7 A. Okay.

8 Q. Let's go on. What is our next integrator
9 complaint?

10 A. What was the last one we talked about?

11 Q. The odor complaint, C05122, the George's.

12 A. Okay. That would be all of the Adair.

13 Q. Before we leave Adair County, on this
14 complainant column on this page 5 of 5, there is a
15 familiar name on the C08149 and 150?

16 A. Uh-huh.

17 Q. Can you tell me what those complaints are?

18 A. They were complaints that were filed back in
19 April of this year, regarding several poultry
20 facilities. Mr. Lennington filed those complaints
21 from the Attorney General's office regarding those two
22 facilities as well as a couple of others.

23 We investigated them, as we do all
24 complaints and treated them as we have the rest of
25 these.

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1 Q. Okay. And this is Voo and Mullins?

2 A. Right, Voo Lauren, Voo Blia. B-L-I-A.

3 Q. Do you know what the other complaints were
4 that were made by Mr. Lennington?

5 A. I think they are listed in here. Three were
6 in Delaware County, I'm looking at page 8 of 8,
7 beginning at C-08-152, C-08-153, C-08-157, would be
8 three additional complaints that were filed in April
9 of '08 by Mr. Lennington.

10 Q. Okay. Have these complaints that were filed
11 by Mr. Lennington, have these files been produced to
12 the defendants?

13 A. They should have in the --

14 Q. The supplemental production that was just
15 made?

16 A. That's what I was just thinking is that
17 these would have been contained in that supplemental
18 production.

19 Q. Do you know whether there were any
20 violations found in any of these cases?

21 A. There were problems, I'm looking still at
22 8- -- 8 of '08, the C-08-152 indicates that we had to
23 make corrective actions were required for the Monty
24 Jones facility. The John C. Jones facility, the next
25 one on the list there received a letter of warning,

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1 and there was also a letter of warning for piling
2 poultry waste outside unprotected for Dale and Sharon
3 Guthrie.

4 The ones we started with here on page 5 of 5
5 for Adair, letter of warning was issued for the 08-149
6 against Voo Lauren Blia Voo. And a letter of warning
7 was also sent to Daniel Mullen, C-08-150, for letting
8 poultry litter stack outside. And that appears to be
9 all of them.

10 Q. Was there any determination in any runoff in
11 any of those complaints?

12 A. I said 8 of 8 didn't I? Yes, I did. Those
13 are stored in the individual producer files. Based on
14 the spreadsheet, the first one, Monty Jones does not
15 indicate what the problem was in here, except that
16 there needed to be follow-up and the requirements were
17 completed.

18 The letter of warning was sent because the
19 piles of waste are required to be protected, and what
20 that basically means is protected from runoff to make
21 sure that the pile doesn't runoff. That's the
22 terminology used by Mr. Parrish. Dome berm was built,
23 that's to take care of the runoff issue on that
24 facility.

25 Same with Dale and Sharon Guthrie. Litter

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1 warning for piling poultry waste outside, unprotected
2 from rainfall, et cetera, that would cause the --
3 cause runoff from that facility.

4 Q. When you're saying cause runoff, was there
5 an actual determination of runoff or are you just
6 saying that there is the potential for runoff on these
7 events?

8 A. I don't see that they actually identified
9 particular runoff, but that would depend on how long
10 it had been sitting out there and such as that. But I
11 don't see that they have identified specific runoff,
12 instead they just said fix it, make sure there is
13 no -- make sure there isn't any runoff from this pile.

14 Q. Okay. So there was no affirmative finding
15 of runoff from any of these incidents?

16 A. Not identified here.

17 Q. Do you know if there were any fines levied
18 in any of these complaints made by Mr. Lennington?

19 A. Those three, it doesn't appear to. They
20 were letter of warnings instead as issued. No, the
21 other two also received letter of warnings.

22 Q. Okay. Did ODAFF take any action against
23 the, any of the integrators for these complaints by,
24 made by Mr. Lennington?

25 A. No. These were identified as poultry

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1 operators, and we made the corrective actions through
2 the poultry grower.

3 Q. Okay. Let's go back to our integrator
4 questions. We were in Cherokee County, what
5 integrator violations or complaints do we have in
6 Cherokee County?

7 A. There is -- the second one down on page 1 of
8 3 of Cherokee County, there is a Cobb-Vantress
9 complaint, AIC-97-159, improper disposal of litter, no
10 violations. It was closed without any indications,
11 that they identified anything at that time.

12 MR. LENNINGTON: Let's change the tape real
13 quick.

14 (Short break)

15 Q. (BY MR. HIXON) Okay. We were at, left off
16 with the Cobb-Vantress, there is no violation there.
17 What is under the next Cherokee County complaint?

18 A. I have C-05-112, it says Simmons-Carl
19 Guthrie.

20 Q. Okay. Is that a Simmons --

21 A. I'm not positive that that is a Simmons
22 owned facility. It has got a license number, and I
23 don't know of any currently Simmons owned facilities
24 at that time. So there is -- Carl Guthrie could be
25 the grower for a Simmons facility. But again, it was

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1 improper carcass disposal and odor were the
2 allegations, it was not runoff.

3 Q. And there were no violations in that case?

4 A. That's correct.

5 Q. What is our next case under integrators?

6 A. We have a page 2 of 3 would be WQC-01-021,
7 this is again a Cobb-Vantress facility, but it was
8 only an odor allegation, but it was odor related to
9 the spreading of litter.

10 Q. There wouldn't be any runoff found in that
11 event?

12 A. That was not the violation that was -- that
13 was not the complaint, that's correct.

14 Q. Okay. What is our next Cherokee County
15 integrator complaint?

16 A. There is not any more Cherokee County
17 integrators as the respondent.

18 Q. Okay. Sequoyah County, are there any
19 integrator complaints in Sequoyah County?

20 A. Does not appear to be so, no, sir.

21 Q. So that's all of the integrator complaints.
22 Going through these complaints, this brings us up from
23 the beginning of this database to the present, or at
24 least through --

25 A. September 10th of '08 was the date these

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1 were run.

2 Q. Okay.

3 A. And that date is identified on the bottom.

4 Q. And the complaints made against integrators,
5 there were no complaints finding runoff; is that
6 correct?

7 A. Other than the ones that were related to
8 improper storage or something to that effect, but
9 runoff was not the finding.

10 Q. There was no finding of runoff, there was
11 simply the potential for runoff in those cases?

12 A. Yes, sir.

13 Q. Was there any action taken against any of
14 the integrators on these complaints that we have
15 talked about under this 2-18.1?

16 A. Many of those were much older, and we didn't
17 have that statute until later on. Do you have the
18 exhibit with the --

19 Q. You should also have the exhibit.

20 A. The very first time that law was in effect
21 was April 6th of '04.

22 Q. Okay.

23 A. So if it was previous to that, we didn't
24 have this at our disposal.

25 Q. Okay. Let's add that one, the official one

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1 to the stack.

2 A. I wonder if I stacked it some place else.

3 Q. Let's move onto Topic 4, which is all
4 information about complaints alleging that poultry
5 waste has been discharged to the waters of the state
6 within the IRW.

7 Would those complaints to the extent there
8 are any, be identified in this Exhibit 21?

9 A. Yes.

10 Q. Okay. Let's go through the same exercise.

11 A. And this is for anyone?

12 Q. This is for anyone where there was a finding
13 that poultry waste had been discharged to the waters
14 of the state. And let's include in that a finding of
15 runoff to the waters of the state as well?

16 A. In the, and this one I don't know what it
17 was ultimately determined, but the AIC-97-074 was
18 Orville Frazier versus Bill Carr. And it was improper
19 disposal of carcasses, but there was a referral to DEQ
20 regarding bacteria in the water for their sampling.

21 And we found no violations of what we had at
22 that time, keeping in mind that was previous to the
23 Registered Poultry Feeding Operations Act, and
24 previous to 18-1. And so the bacteria issues were
25 referred to DEQ.

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1 Q. Do you know -- sorry, go ahead.

2 A. We don't typically get their response. Once
3 we refer to it them, then they are responsible for it.
4 But they don't typically provide the results to us.

5 Q. Did you ask for the findings on this
6 particular complaint?

7 A. No.

8 Q. In preparation for your deposition today?

9 A. I asked DEQ to provide me with everything
10 that they had regarding Illinois River and poultry,
11 and they did not provide anything related to that. So
12 I don't know what their disposition was.

13 Q. Okay. So you can't say whether there was a
14 discharge or runoff of poultry waste in this
15 particular case --

16 A. No, there wasn't poultry waste, we are
17 talking about improper disposal of carcasses.

18 Q. Okay.

19 A. Which can be identified as poultry waste.
20 It is actually defined as -- poultry waste is actually
21 defined as litter and carcasses.

22 Q. This was not a litter issue?

23 A. This did not have an indication of litter
24 problems.

25 Q. Do you know what DEQ found with regard to

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1 the bacteria issues?

2 A. I don't. This was not one of the items.
3 This is not some of the stuff they provided.

4 Q. Okay. Let's move on, what is our next
5 finding of discharge or runoff of litter to the waters
6 of the state?

7 A. And by finding, do you want me to skip the
8 ones that say the allegation was runoff? Or do you
9 want me to --

10 Q. Correct. I want to know where there's been
11 an actual finding by the state of Oklahoma, whether
12 ODAFF, DEQ or any of the other administrative agencies
13 that there was an actual runoff --

14 A. Based on these complaints.

15 Q. Of poultry litter. Where are you in your
16 review?

17 A. I'm looking at WQC-02-069. The -- these are
18 Delaware County, so again very few of these are
19 actually in the watershed. I'm thinking that
20 Wyandotte is not in the watershed, and that's where
21 this particular complaint took place.

22 Q. What page is that on?

23 A. 2 of 8, second from the bottom. And I just
24 can't place Wyandotte right now. But I'm thinking it
25 is northern, north of there.

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1 I'm looking at 03029, which is on page 3 of
2 8.

3 Q. A complaint against Lloyd Anderson?

4 A. Uh-huh. We sent -- we have corrective
5 actions in that case. So I'm verifying what those
6 were. The full blown details were spreading poultry
7 waste from George's egg and poultry operation,
8 odorous, horrendous waste was being overapplied. That
9 was the -- what we took over the phone.

10 Q. That's an anonymous complaint?

11 A. Yes.

12 Q. Who was applying the litter in that case?

13 A. The truck, the spreading truck was Lloyd
14 Anderson Produce of Colcord, Oklahoma. West --

15 Q. Where was the litter being spread?

16 A. It looks like it was -- the driving
17 directions are west of Siloam Springs on Highway 412
18 to New Life Road, then turn north. I want to say that
19 that's out of the watershed, that that's more
20 Euch/Spavinaw, location wise.

21 Q. Okay. What was the basis for determining
22 that it was litter from a George's facility?

23 A. That was the allegation. Here in his
24 report, met with Keith Horn, our inspector did.

25 Q. Do you know who Mr. Horn is?

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1 **A.** He's apparently associated with George's at
2 that time. And because he asked Mr. Horn if, and this
3 is from the John Littlefield's report. I asked
4 Mr. Horn if George's had a applicator's license, he
5 showed me their private applicator's license. They
6 spread their own liquid poultry litter on their land,
7 they do not spread their own dry litter. It is all
8 sold.

9 **Q.** Was there any determination of discharge or
10 runoff of litter in this case?

11 **A.** Looks like the major violations on this
12 particular case were the individuals spreading it from
13 this Lloyd Anderson Produce did not have a license, an
14 applicator license and had not received education or
15 anything of that sort. So was not familiar at all
16 with that.

17 So he was required to take care of that.
18 That was the violation that was identified, not a
19 runoff violation.

20 **Q.** Okay. So there was no determination of
21 runoff or discharge on this complaint?

22 **A.** Not by that inspection, that's correct.

23 **Q.** Okay. What is our next complaint?

24 **A.** I'm down to page 5 of 8, where the
25 allegation is possible water contamination. C-05-120,

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1 it is the bottom listing. The complainant was Vinita
2 OHP on Greg Rowkay. It is Delaware County. If it was
3 the Vinita OHP, I bet it is not in the watershed. But
4 I can double-check that one.

5 Q. Okay. Go ahead.

6 A. Okay.

7 Q. Is that file handy?

8 A. Should be. It may be in the -- it may be in
9 the grower's file, because there's a grower number
10 there. No, it says it is in here. West of Colcord on
11 Highway 116 is Euch/Spavinaw.

12 Q. Okay. What is our next one then?

13 A. On page 6 of 8 there is a Jack Pardue,
14 C05-194. He had corrective actions he had to follow.
15 So let's see.

16 Q. Where it is indicated that there were
17 corrective actions required?

18 A. Uh-huh.

19 Q. What form would those be communicated to the
20 individual? Is that a notice of violation?

21 A. Either through the -- at this time we
22 didn't -- it would have been done through either a
23 letter of warning or through a corrective action
24 letter, or the inspector could have made verbal
25 statements to them that he put into his later report.

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1 Q. Okay.

2 A. Let's see where this one is specifically.

3 Q. How would the correction itself be
4 documented?

5 A. The inspector would go back out and do a
6 follow-up report and identify that everything he told
7 him to do was then corrected.

8 Q. Okay. Was there any finding of runoff or
9 discharge in this --

10 A. This particular one is in the Lake Hudson
11 Watershed it says there.

12 Q. Okay. What is our next one?

13 A. I'm leaving out the ones that say possible
14 future water contamination.

15 Q. Okay. Now, unless there was a finding --

16 A. Not --

17 Q. Right now I just want findings in actual
18 discharge or runoff of poultry litter.

19 A. Okay. C-06-122 is on page 7 of 8, the top
20 one. Kevin Ketkeo for improper waste management. Let
21 me find out precisely where he's at. The allegation
22 there is he land applied 30 to 50 foot from a pond and
23 drinking water well.

24 Q. Were there any water samples taken from this
25 drinking well in this case?

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1 **A.** They would be indicated in the file. That's
2 in '06. By then we were putting them in the grower
3 files so let me go pull his, it won't take but --

4 **Q.** Let's go off of the record while do you
5 that.

6 (Short break)

7 **Q.** (BY MR. HIXON) This complaint C06122, were
8 there any samples taken of this drinking well?

9 **A.** No, there were samples identified in the
10 file, but they are not water samples, they are animal
11 waste and soil samples.

12 **Q.** Is there any finding of discharge or runoff
13 in this particular case?

14 **A.** The inspector's report indicated that it was
15 applied approximately 30 feet from waters of the state
16 of his pond and to the complainant's well. The letter
17 from Mr. Parrish telling him to respond to this was
18 simply saying that there was a violation because he
19 actually applied within that -- within that buffer
20 area. He did not indicate a actual water
21 contamination, but indicated it was too close.

22 **Q.** Is this pond a farm pond?

23 **A.** Yes.

24 **Q.** Okay. And that was located on Mr. Ketkeo's
25 property?

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1 A. Yes.

2 Q. Okay. There is no finding of discharge or
3 runoff?

4 A. Actually there is a statement in this one
5 that says this requirement, we told him not to apply
6 in that corner, but it says that no scientific
7 evidence is revealed your water well is contaminated
8 by poultry waste. So he actually made that finding in
9 his letter to the complainant, Mr. Parrish did.

10 Q. That there was no contamination of the well.

11 A. That's correct, but from a precautionary
12 standpoint, don't apply.

13 Q. Can you refer just for the record the date
14 of that letter?

15 A. The date of that letter was April 7th of
16 2006, to Ms. Judy VanDike from Mr. D.J. Parrish.

17 Q. Okay. What is our next complaint regarding
18 discharge or runoff?

19 A. We have a complaint on that same page of
20 C-07-045, Ginger Mitchell versus Young Saylee,
21 improper waste management, and it indicates that we
22 required follow-up activities and corrective actions.

23 Q. Okay. In this allegation, this refers to
24 flies and odor?

25 A. And improper waste management, yes.

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1 Q. Okay. Was there any finding of runoff or
2 discharge on this complaint?

3 A. That would be in the grower file, because of
4 the late date on it, which would be -- can you take
5 two seconds and let me move those boxes over here?

6 Q. Sure, let's go off of the record again.

7 (Short break)

8 Q. (BY MS. TUCKER) Okay. So you can't find
9 the file for this --

10 A. Young Saylee.

11 Q. The 07445?

12 A. It may be a closed file. At the next break,
13 I will make a note.

14 Q. Okay. But as far as the spreadsheet goes,
15 there is not any indication here that there was a
16 finding of runoff or discharge; is that correct?

17 A. That's correct.

18 Q. Okay. What is our next one?

19 A. On page 8 of 8 we have three in a row on
20 Paul Yang, Y-A-N-G. It looks like that one is not in
21 the watershed.

22 Q. Okay. Where is that, just for the record?

23 A. If it is this one, it is --

24 Q. Paul Yang?

25 A. No, that's not even the right file. These

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1 guys go in and out of business, and so that's another
2 one that's probably in the closed folder over there.

3 Q. Okay.

4 A. I will get them here at the next break.

5 Q. But there is not any --

6 A. There is no determination -- all it notes is
7 corrective actions and note that two of the three
8 complaints against Mr. Yang were actually improper
9 carcass disposal and odor. And one of them was
10 improper waste management, and that's the one that I'm
11 interested in.

12 Q. Okay. What is our next one?

13 A. We talked about each of these, the Monty
14 Jones and John C. Jones. These were the litter piled
15 up that were filed by Mr. Lennington against Monty
16 Jones, John C. Jones and Dale and Sharon Guthrie.

17 Q. Right. We talked that there was no
18 affirmative finding of discharge or runoff in those
19 cases; correct?

20 A. Yes, we did.

21 Q. Okay.

22 A. Now I'm on the Adair County page. On page 1
23 of 5, we have a second complaint on Kevin Ketkeo that
24 we did before.

25 Q. What is that complaint number?

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1 A. I have 05054.

2 Q. And this indicates there was no violation
3 found in this case; is that correct?

4 A. But it also indicates we did sampling. So I
5 want to review the sampling.

6 Q. Okay.

7 A. On it. That's 05054, correct? Yes. Yes,
8 there was extensive work apparently at the site. The
9 original allegation on this particular one was
10 neighbor with chicken houses dug out pond and waste
11 from chicken houses. Pond is full of chicken waste,
12 this would be the same pond from the earlier
13 allegations. The pond is going into her well. The
14 complainant has had the water well tested and is
15 awaiting results.

16 The man who dug out the pond said he has
17 seen worse ponds, but this one was nothing but chicken
18 waste.

19 Q. Whose making that allegation?

20 A. This is from the complaint details as it was
21 taken from Ms. VanDike, apparently.

22 Q. Okay. Was there any contamination of
23 Ms. VanDike's well from --

24 A. Let me find her sampling results.

25 Q. -- this pond?

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1 **A.** On the day of the inspection, according to,
2 and this is -- and what I'm looking at is the site
3 inspection report of Dr. Jim Seradge who is a
4 hydrologist on our staff contract employee. He was
5 full-time at one time also, but I don't know if this
6 was after he went on contract or before.

7 **Q.** And that's when ODAFF?

8 **A.** That's right, with the Aims Division. And
9 he identifies that in order to increase the capacity
10 of the pond, that the grower cut the berm to let the
11 affluent discharge downstream. The remaining sludge
12 was pushed downstream to increase holding capacity of
13 the pond.

14 Inspector Berry's taken several photos on
15 his last inspection showing the sludge in the
16 intermittent creek. The pond also serves as watering
17 hole to approximately 50 cows. The land slopes toward
18 the pond and is more likely that the waste from the
19 cattle also goes into the pond.

20 On the day of our inspection, the berm was
21 repaired and no effluent was seen in the creek. He
22 identifies where some things are on the site, water
23 wells, abandoned windmills.

24 **Q.** Was there any sampling done at the creek?

25 **A.** He says that he made -- he tried to

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1 determine the depth to the water table, but was
2 unsuccessful. Complainant indicated it could be
3 approximately 100 feet below. So they weren't able to
4 identify exactly how deep.

5 He identifies the geology of the area.
6 Groundwater sample was collected from grower's water
7 well. An effort was made to collect a well water
8 sample from complainant's well but was not collected
9 due to Clorox treatment of the well. And they made
10 plans to revisit in three weeks after this inspection.

11 Q. What was -- what were they looking for in
12 the water sampling that was done?

13 A. Determine if the water well had been
14 contaminated.

15 Q. Contaminated by what?

16 A. By poultry waste.

17 Q. What constituent of poultry waste?

18 A. Well, it doesn't -- I don't have what they
19 sampled for on that page. So let me go -- it is
20 further down. They were going to collect samples
21 here. There is some sampling data here. They sampled
22 for fecal coliform. It came out less than one.

23 They sampled for a routine group of items,
24 everything from sodium, calcium, magnesium, total
25 soluble salts, nitrate, sulfate, pH, NH₄, sampled for

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1 those items.

2 Q. Was there any violation or any runoff or
3 discharge found?

4 A. Find his assessment. Normally Seradge would
5 do a follow-up assessment of what he found. Here we
6 go. This is based on the two groundwater samples that
7 were collected.

8 His assessment is the data shows that the
9 water quality in the sample, and this is from Judy
10 VanDike's well, meets all of the safe water drinking
11 standards adopted by the EPA in the state of Oklahoma.
12 Nitrate N is below ten milligrams, chlorides are below
13 250 milligrams per liter, total soluble salts is below
14 500 milligrams per liter. The low concentration of
15 nitrate, ammonium and phosphorous indicates that the
16 complainant's water well is not affected by the
17 agricultural waste.

18 Same was true of Mr. Ketkeo's well, which is
19 actually upstream of complainant's water well is how
20 he's identified that.

21 Q. So there was no contamination of the poultry
22 farmers well as well; is that correct?

23 A. Yes. He did not identify any contamination
24 problems from the poultry waste at those water wells.

25 Q. What is our next complaint regarding

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1 discharge or runoff?

2 A. Adair County, top of page 2 required
3 corrective actions were dealt with 06081, which
4 would -- I can't figure out where this box cuts off.
5 So his name, Lester Turner. But it appears he may be
6 an applicator, not a grower.

7 Q. What leads you to indicate that he may be a
8 applicator, not a grower?

9 A. If you notice the license number there, it
10 says private 550, that would be a private applicator's
11 number, rather than a poultry grower's number. Rather
12 than a registered poultry feeding operation number.

13 And then the same would be true with the
14 next one down, letter to applicator for additional
15 info. This would be DeWayne Asbuilt and he's a
16 commercial applicator, 128 commercial.

17 Q. Okay. These two incidents where you have
18 got this private applicator and commercial applicator,
19 would this litter be spread on a registered poultry
20 feeding operation or would this be somewhat unrelated
21 to the poultry industry?

22 A. It could be actually spread on that. For
23 example, commercial applicators are often hired by
24 poultry growers to come out and spread their litter on
25 their property, or they will purchase additional

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1 litter, it can be.

2 Often, though, those guys are also going to
3 be out there spreading on their -- spreading on like a
4 cattle producer's property that would like to get, get
5 some litter. But I mean, those are all related to the
6 industry, because they have got contracts associated
7 with poultry growers where they get their litter from
8 the beginning.

9 Q. Okay. Is it your testimony that the poultry
10 integrators have some control over the fertilization
11 practices of cattle producers?

12 A. That's not at all what I said. I said that
13 the source of the litter would be connected, because
14 the individual spreading it had to get it from
15 somewhere. He's going to have a contract with a
16 producer, the poultry producer, and it could be with a
17 company elsewhere. Depends on their relationship and
18 who they work with.

19 Q. We were looking at runoff and discharge from
20 these poultry operations?

21 A. From the actual operations? Isn't that what
22 you just --

23 Q. No.

24 A. I'm lost.

25 Q. We went off on a tangent, let's go back to

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1 our topic.

2 A. Okay.

3 Q. We are looking for complaints regarding
4 discharge and runoff.

5 A. Right.

6 Q. What is our next one?

7 A. This is 061-38. The allegation is improper
8 waste management.

9 Q. Let's go back to this one we were talking
10 about, this C-060 --

11 A. I'm sorry.

12 Q. Indication that there was a finding of
13 discharge or runoff in this case?

14 A. He's looking for the file over there right
15 now, because that one is '06, so it appeared in our
16 applicator files.

17 Q. What is the next one while Mr. Hammons is
18 looking for that file?

19 A. That would be DeWayne Asbuilt as well. He
20 had a lot of warning issued. So we are
21 double-checking that one. The third one down though,
22 is also improper waste management, it says all
23 ODAFF -- the reason I'm identifying these is because
24 they were corrective actions required.

25 Q. Okay.

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1 A. So if -- and letter of warning was written
2 in this Pat Murphy one.

3 Q. Did you make any effort prior to today to
4 identify complaints regarding discharge or runoff of
5 poultry waste?

6 A. Yes.

7 Q. And what were those efforts?

8 A. Those efforts were reviewing the list,
9 identifying which ones needed an additional look, and
10 then I went through the boxes to determine kind of --
11 I tried to place everything where I could get to it,
12 knowing that the primary ones would be in these
13 complaint ones, the bulk of them would be in these two
14 boxes back here, because we filed complaints
15 separately from files in '05 and proceeding.

16 But these last couple of years we have
17 actually filed them in grower files. So I had the
18 growers files where I could actually get to them, but
19 they weren't, they're over here now.

20 Q. At your last deposition on the record, I
21 made a request that we not dig through the boxes and
22 burn the time that we have remaining digging through
23 boxes.

24 We have gone through a number of complaints
25 today looking for a determination of runoff or

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1 discharge and we have yet to find one. And I want to
2 know what your efforts were to find, prior to today, a
3 complaint that resulted in an affirmative finding of
4 discharge or runoff of litter to the waters of the
5 state?

6 A. I understood that my task was to find
7 anything that had an allegation of runoff, and those
8 are the ones that I have looked at. Some resulted in
9 problems, some didn't.

10 But I went through to determine what the
11 allegation was and what then the inspection report
12 from there. And that's what we are looking at. And
13 if it says improper waste management, that can be
14 runoff as well. So I have tried to -- I have tried to
15 do what you want to do without putting 80 files
16 stacked here. But there is too many files for me to
17 have them all stacked --

18 Q. Eighty files back there would be faster than
19 burning time looking through a box. Okay, how did you
20 identify those where runoff or discharge may have been
21 determined?

22 A. I looked at the allegations.

23 Q. Are those the highlighted ones that you
24 have?

25 A. Yes.

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1 Q. Okay.

2 A. And there are times that the allegation says
3 runoff, that makes it easy for me. But there is other
4 times where the people inputting the information, and
5 by inputting the information, I mean the person taking
6 the complaint makes note that it is improper waste
7 management, which can be runoff, can be a myriad of
8 other things, obviously.

9 But I tried to leave out if it said odor, I
10 didn't want -- I'm not getting into odor or this
11 litter spill where there was no violations or carcass
12 disposal, I mean, there is a number of complaints we
13 get that are unrelated entirely.

14 Q. Okay. Mr. Hammons has just handed you a
15 file. Which file is this?

16 A. He handed me the Lester Turner.

17 Q. Okay. That's the 06081. Is there any
18 finding of discharge or runoff in that particular
19 complaint?

20 A. This was a minimal one. This, he didn't
21 complete all of his documents properly when he was
22 getting his poultry waste applicator stuff done.
23 There are various reports that they are required to
24 file.

25 Q. So this is some procedural violation?

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1 A. Uh-huh.

2 Q. Unrelated to improper waste management?

3 A. Yes, that's correct, according to that file.

4 Q. Is there a standard definition where the
5 allegation is improper waste management as to what
6 improper waste management is?

7 A. No, that's a catch all phrase.

8 Q. Okay.

9 A. They have started using in the database to
10 try to get more consistent terminology used in the
11 database. If it is one of a myriad type of
12 complaints, relating to waste management, then they
13 try to put that in there. So if we do a search based
14 on improper waste management, we will get a full list
15 of those.

16 They were trying to clean up the database by
17 indicating things more specifically.

18 Q. Are there any standards for any of these
19 entries in this database?

20 A. What do you mean by standards?

21 Q. Well, I mean --

22 A. There is no drop down list or anything for
23 them to input it.

24 Q. Okay. It is whatever the -- whoever is
25 inputting the data --

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1 **A.** And it is whoever -- I mean, whoever is
2 filing the complaint also. This is not -- this is not
3 like some of our databases that have drop down lists
4 that you go through and you identify, this is free
5 form is how it is referred to, that's why sometimes
6 you find the against it, may include a poultry
7 company's name as well as a grower's name, because
8 that's how the complainant identified them.

9 It may -- that's why sometimes you will even
10 find them -- well, for example, when we were getting
11 that rash of Simmons complaints on the poultry
12 processing plant up in Southwest City, Missouri, we
13 were getting all of these complaints on it.

14 But you notice it never turned up the same
15 listing any of those times. The only common word was
16 Simmons in those. So because it is free form, even
17 the action and the reasons for closures tend to be how
18 it got put in there at the time, or depending on who
19 was in charge of putting it in at the time. We have
20 had a number of folks responsible for that.

21 **Q.** What is our next complaint that could be
22 related to runoff or discharge?

23 **A.** This one on improper waste
24 management, 06-138, Pat Murphy -- Henry Jacobs versus
25 Pat Murphy, it was a requirement that we get lab

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1 results. Again, it was just an improper waste
2 management. But if you notice, it has got a specific
3 notice on the action portion that says phosphorous
4 level was okay.

5 Q. Okay. Is that referring to water, or is
6 that soil?

7 A. Soil.

8 Q. Okay. Is there any indication that there
9 was any runoff or discharge related to this complaint?

10 A. No, this was a soil sampling issue.

11 Q. What is our next one?

12 A. This is a fine. This individual was fined
13 for improper waste management related to being an
14 applicator. He was the applicator for this Jack
15 and -- Jack and Cheryl Lumberg, complaint was filed on
16 his method of land application.

17 And he was actually fined for two counts,
18 because that's a \$400 fine there. He would have been
19 fined there for probably not having a waste
20 applicator's license. That looks like a, like you
21 called it, a technical violation.

22 Q. Okay. So there is not any finding of a
23 discharge in that, or runoff of poultry litter?

24 A. No, not from that location. Not based on
25 this information.

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1 Q. How many more highlighted complaints do you
2 have in your --

3 A. I have quite a few highlighted ones, but
4 sometimes I accidentally -- I can already see I
5 shouldn't have highlighted that one, because it says
6 carcass disposal.

7 But most of them are -- I tried to focus on
8 water contamination or the word runoff or uncovered
9 poultry waste, which could result in runoff, and then
10 the improper waste management is the catch all phrase,
11 so those are the other ones that I highlighted along
12 there.

13 Q. Are we down to something less than 80 at
14 this point?

15 A. I would think so.

16 Q. I mean, can you take a break and pull those
17 files and we can go through those and determine
18 whether there was a finding of discharge or runoff in
19 any of those cases?

20 A. Yes, we should be able to do that. Where do
21 you want me to start with, with the Pat Murphy guy
22 that we just talked about, or moving on to the --

23 Q. I think the last one we talked about was
24 this C-07-057, so let's start with whoever is after
25 that one.

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1 A. Okay.

2 Q. And let's take a break.

3 (Short break)

4 Q. (BY MR. HIXON) Okay. Ms. Gunter, when we
5 left, we were talking about Adair County complaints
6 regarding runoff or discharge. Did you have time to
7 pull the files of the ones that you identified might
8 involve those allegations on those findings?

9 A. Yes, I went through the files and made quick
10 determinations on whether they would be responsive or
11 not. And so I pulled a few. I didn't have as many
12 left after I got through that.

13 Q. Okay. Let's just go -- is this the stack
14 that you found that you thought might be responsive?

15 A. Right.

16 Q. Okay. Let's go through these. If you would
17 identify the complaint number?

18 A. This particular one is C-08-048.

19 Q. Okay. Where does that appear on these
20 sheets?

21 A. It is on the list of page 2 of 5 of the
22 Adair poultry complaints, about two-thirds from the
23 bottom, about third from the bottom. It is Mike
24 Taylor. It is Anonymous versus Mike Taylor. And I
25 pulled this one mainly because there was an allegation

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1 that there was water contamination to wells in this.

2 Our inspector did a review, did an
3 investigation of it, identified ponds, identified
4 buffer strips, all of that sort of thing. But the
5 problem with it was we were not -- I can't say this
6 was not -- that runoff didn't exist in this one,
7 simply because this turned into an anonymous
8 complaint, and therefore we were unable to find that
9 person's water well to determine if there was indeed
10 contamination to it.

11 The land slopes towards those neighbors and
12 towards their ponds and such, but because it was an
13 anonymous complaint we were unable to verify,
14 therefore we can't say there was no runoff event, but
15 we didn't have the ability to adequately investigate
16 because it was an anonymous complaint.

17 Q. Okay. Was the alleged contamination of the
18 anonymous complainant, is that what I'm understanding?

19 A. Yes, yes. They had complained that water
20 wells were -- that they contaminated this person's
21 water well, and that every time they spread that they
22 caused problems to the water well.

23 Q. Okay. And it is your testimony that you
24 couldn't determine whether there was any runoff
25 because the complaint was anonymous?

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1 A. Right. So we were unable to fully
2 investigate that one appropriately.

3 Q. But there wasn't any affirmative finding
4 that there had been any runoff or discharge; is that
5 correct?

6 A. That's correct.

7 Q. What is the next one you have?

8 A. This one 06-121, same page on second from
9 the top. I'm sorry, these are not now in direct
10 order.

11 Q. Okay.

12 A. This particular individual land applied
13 litter during a rainfall event, which can result in
14 runoff. The actual investigation however didn't take
15 place until several days later, and we did not
16 apparently take any water samples at that time, but
17 the individual admitted that he had land applied
18 during the rainfall event, which can result in runoff.

19 He only received a letter of warning,
20 because number one, his samples were -- he said he got
21 his samples prior to the land application event, but
22 they were dated March 22nd of '06 and he had actually
23 land applied them March 10th, 11th and 12th of '06, so
24 he didn't actually have the samples.

25 So we don't know if over application

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1 occurred at that time or not. And in addition, then
2 the rainfall event alone. But there is no absolute --
3 there is no indication that we did any sampling up and
4 downstream to determine if a runoff event had actually
5 occurred from that, but that's the allegation.

6 Q. When you're talking about the samples, that
7 individual's samples, are you talking about soil
8 samples?

9 A. Soil samples, yes.

10 Q. But there was no affirmative finding of
11 runoff or discharge?

12 A. Not at that time.

13 Q. What was the next one that you have?

14 A. This one is, let me find it. It is Adair.

15 01-177 is on page 4 of 5 of the Adair County
16 complaints, it is the top line. This was an anonymous
17 complaint against Laughton Poultry. This one actually
18 resulted in a fine, and again it was in that
19 resolution by a proposed informal resolution of
20 complaint, which was an agreed to fine.

21 Q. What was the basis of the fine?

22 A. The allegations were over application, and
23 they hadn't done any testing appropriately on this
24 facility, so there was no way to identify that whether
25 they were land applying properly or not.

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1 Q. When you say there was not any testing, are
2 you referring -- what are you referring to?

3 A. I'm referring to soil and poultry waste
4 testing, to make determinations for land application
5 rights to make sure they don't over apply resulting in
6 runoff.

7 Q. Okay.

8 A. And she actually received a \$500 fine and
9 four violation points for that particular allegation,
10 and also had to rework her composter and some other
11 issues and get the sampling under control.

12 Q. Was there any affirmative finding of runoff
13 or discharge in that case?

14 A. Other than the fact that land application
15 was over application, or possibly -- possibly over
16 application, there was no other additional finding on
17 runoff.

18 Q. Okay. So the potential for runoff, but no
19 affirmative finding of runoff, is that what I'm to
20 understand?

21 A. Correct. As any -- many of these are.

22 Q. Okay. What is the next complaint that you
23 have?

24 A. I think this was one I already ruled out,
25 that I didn't find anything that led to -- yes, that

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1 was one I left stacked up here accidentally. Sorry
2 about that.

3 Q. So are those the only complaints that are
4 related to allegations or a finding of runoff or
5 discharge?

6 A. No, they are not the only ones related to,
7 but -- because many of these that were closed no
8 violations were related to runoff, but we didn't
9 identify the problem on the date our inspector was out
10 there. That doesn't mean there wasn't any runoff ever
11 associated with that facility, but on the date we were
12 there, we couldn't identify that.

13 Q. There was no affirm runoff?

14 A. Right. And of the ones that we have looked
15 at, the finding was not runoff, it was the technical
16 violation that can lead to the runoff.

17 Q. Okay. And the complaints you pulled, you
18 also looked through the sheets for Cherokee and
19 Sequoyah County; is that correct?

20 A. Yes, I did, and I didn't actually pull any
21 files for that particular one, well, I did, but I
22 rejected them after I reviewed them some more.

23 Q. Okay. During your last deposition you
24 talked about this upstream and downstream sampling and
25 the finger printing that's done. Can you identify any

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1 specific incident where ODAFF has performed that kind
2 of sampling related to the Registered Poultry Feeding
3 Operations Act or the CAFO Act?

4 A. Didn't the one we talked about a while ago,
5 where I was making reference to Seradge, Dr. Jim
6 Seradge, didn't he make reference to comparisons to
7 that?

8 Q. That was groundwater, I believe, that was a
9 water well. Would that have been an example of what
10 you were talking about during your last deposition?

11 A. Yes, it can, because it can be done for
12 groundwater as well, the similar type of set up. But
13 that would not have been upstream/downstream in that
14 case. But he would have used a similar methodology if
15 he had identified something in the well, than he would
16 have gone back to the litter and identified it, to see
17 if the constituents matched up through his finger
18 printing that litter.

19 Q. Do you know the specific example where there
20 would actually be sampling upstream on a stream within
21 the IRW and downstream in making that comparison that
22 you have talked about?

23 A. We don't do as much -- our agency doesn't do
24 as much sampling of water under the Poultry Act as we
25 do under the CAFO Act, so most of my examples would

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1 mostly come from western operations where it was
2 liquid waste.

3 I can't think of a specific instance where
4 we did it, that doesn't mean we didn't do it. But it
5 would be kind of a case by case thing, and I just
6 don't know of one specifically where we did that.

7 Q. My recollection from last time is that there
8 were only three CAFOs in the Illinois River Watershed;
9 is that correct?

10 A. I think that's right, yes.

11 Q. Okay. All right. Let's move on. Topics 3
12 and 5 are related to, again, to the complaints. To
13 the extent that there is a complaint that's related to
14 the Registered Poultry Feeding Operation Act or the
15 CAFO Act would that complaint be identify in what we
16 have marked as Exhibit 21, these spreadsheets for
17 Delaware --

18 A. For poultry, yes.

19 Q. And poultry is all we are concerned about
20 here.

21 A. Okay.

22 Q. And all of the complaints in here have been
23 identified, or produced to the defendant, to your
24 knowledge?

25 A. Yes, yes, either in the original or the

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1 supplemental.

2 MR. HIXON: Trevor, do you know whether the
3 complaints we talked about.

4 MR. HAMMONS: That Mr. Lennington.

5 MR. HIXON: Yeah, whether those files were
6 included in that supplemental production that was
7 made.

8 MR. HIXON: What was the date on those?

9 MR. HIXON: Yeah, the complaint I think, was
10 April 18, 2008.

11 MR. HAMMONS: I think they probably would
12 have been, because we did the supplemental production
13 in July or August of this year, or August, maybe.

14 THE WITNESS: I want to say it was July for
15 the poultry stuff we did that. And then, yes, I think
16 that's correct.

17 MR. HAMMONS: Yes. I think they have, if
18 not, we will make copies, just let me know.

19 Q. (BY MR. HIXON) I need to check with them.
20 Last time we were here, I may have misunderstood that
21 there was another supplemental production that was in
22 the works from ODAFF; is that correct?

23 A. Right, and that was on a -- as a matter of
24 fact they have been copied within the last couple of
25 weeks. Those were for the other divisions, we did the

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1 poultry supplemental this summer, and then any of my
2 other divisions, and it was a couple of boxes at most
3 from dairies, nurseries, whatever else we had would
4 have been this most recent supplemental.

5 Q. Okay.

6 MR. HAMMONS: I believe that was mailed out
7 yesterday, actually.

8 MR. HIXON: Okay.

9 Q. (BY MR. HIXON) If there was a violation of
10 an animal waste management plan, would that complaint
11 or violation be covered in this Exhibit 21 as well?

12 A. Maybe. If it was complaint generated and
13 then we identified that it was a violation of the
14 waste management plan, it would be on that list. If
15 it was a violation of the waste management plan that
16 was identified during an inspection, then that would
17 be in the grower files and it would be located in a
18 different database, let's put it that way.

19 Q. Okay. Do you have information from that
20 database, and what database would that be?

21 A. That's from the poultry database that is our
22 compliance database, where we keep all of the records
23 on a particular facility, as far as that goes. And
24 then when our inspection, you have seen some of the
25 files, there is an inspection report, when those are

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1 received at the office, the individual items that need
2 corrective action or need some follow-up are listed in
3 there. Then it is set up in an easy form where they
4 can print that list off for the inspector to go do
5 follow-ups and keep up with it and do summary reports
6 of what issues are pending out there.

7 Q. Do you have a spreadsheet of that database?

8 A. I do. This was a -- this was one of our
9 deals that we don't have queries for, so it is not as
10 clean as it could be. We had to figure out how to
11 extract that info out of it in that fashion.

12 We were trying to get the historical as well
13 as current. Normally we just run reports on the
14 current if it is not closed out to take care of it.
15 And also, it looks like a monster, but it turns out
16 that the database actually will re-list the same
17 compliance issue for each legal description that's
18 entered in and some of these facilities have multiple
19 legal descriptions because they either own several
20 sections or several portions.

21 And so I came up -- I had to ask questions
22 about one that was the same thing listed 12 times and
23 it is because they actually have 12 distinct legal
24 descriptions in there. But it listed it 12 times,
25 when we extracted the data.

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1 Q. Okay. Help me understand what the legal
2 descriptions are. And there is some animal waste
3 management plans they will be fields that are assigned
4 a number 1 through 12?

5 A. That's correct.

6 Q. The legal descriptions that you're
7 describing in these database, do they pertain to these
8 descriptions for each field or is it a separate
9 property?

10 A. No, it is section, township, range, down to
11 the quarter section is what the legal description in
12 our database is.

13 Q. Okay. It is not related to the field
14 designations?

15 A. It doesn't say field one. No, that
16 particular one is just so we know the facility and
17 what it encompasses.

18 Q. Okay.

19 A. And that had to be done, too, so we could
20 identify watersheds, because some people own property
21 in both, and so it was the easiest way was to put
22 those in for our GIS people to try to determine what
23 watershed they were in.

24 Q. Okay. Is this document that you have, is
25 this a printout from that database?

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1 A. Yes.

2 Q. Okay. Is that something that you brought
3 with you last time?

4 A. No.

5 Q. Okay. Let's mark it As Exhibit 23 to your
6 deposition. Do we have some stickers? Okay. This
7 spreadsheet that you have would identify violations of
8 animal waste management plans; is that correct?

9 (Defendant's Exhibit 23 marked for
10 identification)

11 A. It would identify violations noted on an
12 inspection form.

13 Q. Okay. Is this printout limited to the
14 Illinois River Watershed or is this everything in
15 Oklahoma?

16 A. This should be limited to -- I asked them to
17 limit it to the Illinois River Watershed. Obviously
18 there is still a lot of Delaware, but my best
19 understanding is it was limited to that.

20 Now, we have problems where we can run some
21 reports that split it into watersheds and we have some
22 reports that don't. And so this one I'm not sure if
23 it would do it or not. We just -- they had to make
24 due. My database guy did.

25 Q. Do you know if this database has been

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1 produced to the defendants before?

2 A. Yes. Yes. At least one or two updates of
3 it as well.

4 Q. Okay. Was it -- was the entire database
5 produced?

6 A. As an Access database, yes, it was. Well,
7 it was the entire database related to these four
8 counties. We didn't produce the entire database,
9 because it was limited to those areas.

10 Q. Okay. Can you go through and just identify,
11 if you can, a violation of an animal waste management
12 plan that's noted here in --

13 A. Just another note about these, is these tend
14 to be technical violations, so very often what I have
15 found is that when it relates to the AWMP, for
16 example, I'm looking at the first page of this, Vernon
17 and Faye Bailey, Adair County.

18 Stilwell is their location, their criteria,
19 and this is just the way the database was created. We
20 call it a criteria type and then the actual criteria.

21 The criteria type is what subcategory it
22 would fall under, education, soil, litter, education,
23 miscellaneous, AWMP.

24 So that's the criteria, then it will go
25 forward -- the criteria type and then it goes forward

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1 into this.

2 I looked through this and it was -- it
3 appeared to me that what they put on this was the
4 technical violation, need an AWMP, or on their '05
5 renewal they need to complete the number of houses.
6 It is that sort of thing.

7 Q. They haven't completed the forms that they
8 needed to complete?

9 A. In some cases, or some cases there their
10 AWMP issue is that it's old and it is out of date and
11 they didn't bother to apply for a new one yet. There
12 is soil sampling under the soil criteria or litter
13 criteria, they don't have a current litter test or
14 litter current soil test.

15 Q. The litter, entry for litter, what types of
16 things do those entries cover?

17 A. This one for example, and this is the same
18 one over and over, again because she has five. But
19 this is for Diane Longshore, and hers is '03
20 inspection obtain a current litter test. And that's
21 what is listed under litter in that case.

22 So here is one that's soil/litter. Well, it
23 is soil and litter test, typically that's what you see
24 whenever it is listed as litter.

25 Q. Is there anything in this database that

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1 would identify whether any action was taken against
2 this poultry operation for a violation of any of these
3 animal waste management plan requirements?

4 A. If -- make sure I understand what you're
5 asking. Maybe repeat and make sure I'm clear.

6 Q. If there was a violation of an animal waste
7 management plan and it resulted in some kind of
8 administrative action by ODAFF, would that be recorded
9 in this database or would that be in this complaint
10 database that we discussed before?

11 A. It would be more likely contained in a
12 complaint type database. This database is mainly a
13 tool for us to track the facility cases and the
14 problems that might be associated with that facility
15 on the annual inspection.

16 But I don't recall it actually having -- let
17 me think.

18 Q. I mean, is there anything in there that's
19 used by ODAFF as an enforcement tool?

20 A. It would be referred to, the office of
21 general counsel, if, for example, they didn't get
22 their education within the time period they are
23 supposed to, and they received their letter of
24 warning, they didn't get their education, then it
25 would be referred to us.

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1 Same thing if they didn't bother with
2 getting their new AWMP. But what I have printed off
3 here doesn't indicate anything under the target date
4 and compliance date, and I frankly looking at that
5 database, I cannot remember if there is a line in it
6 that says, okay, they are fined for this or they were
7 fined for this. I can't recall that.

8 Now, the list we talked about last time,
9 which is the running list of fines for the Aims
10 Division, which is a conglomeration of every fine that
11 comes through that division, that could be matched up
12 for the individual to one of these. But it is -- he
13 tracks those separately.

14 Q. Okay.

15 A. In his running sheet. And I believe you
16 have that. I know I had it here last time.

17 Q. I have your Exhibit 20 from last time which
18 was the folder that had -- I have four copies of
19 this. Is that the sheet --

20 A. That's a part of the list. That's page 11
21 of 12 of it.

22 Q. Okay. How would you match up something
23 that's in this Exhibit 20 with Exhibit 23, and I match
24 up the -- is it matched up by this case number, or is
25 it --

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1 A. No.

2 Q. By person?

3 A. It would have to be by the individual.

4 Because this -- the gap here is, this doesn't identify
5 it's chickens or swine or anything else. So what I
6 would do is I would take James Adkins, for example,
7 and see if there is a James Adkins, Sperry, Oklahoma.
8 Anybody know what county that is?

9 Q. Not offhand.

10 MR. HAMMONS: Logan. Maybe it is Payne
11 County, I think.

12 THE WITNESS: Okay. That wouldn't be one of
13 these then.

14 MR. HIXON: I think that's Perry. I'm not
15 sure where Sperry is. I'm told that Sperry is in
16 Tulsa County.

17 Q. (BY MR. HIXON) On page 3 of 12 on the fines
18 and deferred --

19 A. 3?

20 Q. Yes, page 3. There is a Doug Kester in
21 Westville?

22 A. Doug Kester.

23 Q. Kester?

24 A. Kester, K-E-S-T, okay.

25 Q. That should be in the Illinois River

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1 Watershed. Is he on the list?

2 A. Westville is Adair County; correct? Yes,
3 Doug Kester. I have one noted. This was from '02.
4 What year was that from?

5 Q. This is '05.

6 A. We have a Doug Kester for Westville AWMP, he
7 needed to file the application for an AWMP, and this
8 was back in '02. And that's the only one listed on
9 Kester from this database, which tells me that this
10 particular item was not tracked as an inspection
11 issue. It may have instead been a -- may have instead
12 been a -- hang on, I need water. My mouth is not
13 working.

14 Q. On this fines received and deferred sheet
15 that's within the Exhibit 20, is there anyway to
16 identify what this fine relates to? There is a case
17 number. What is the significance of the case number?

18 A. That case number is the legal file number,
19 05-71, division of legal services, so that would have
20 been a legal file, but -- and we were still honing our
21 ability to do these things coherently between this
22 division and division of legal services, we are better
23 now.

24 But the --

25 Q. When you say this division, you mean the

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1 Aims --

2 A. Aims division and the legal services or
3 office of general counsel it is now called. So Dan
4 keeps these just strictly for his own reference that
5 he wants to show people we have, you know, done these
6 things. So this is his own reference, but it doesn't
7 have any relationship necessarily to his license
8 number, doesn't have any relationship to if it is a
9 DLS number, it is not going to tell if it was based on
10 a complaint, it is not going to tell if it was based
11 on -- it is not going to say where that originally was
12 generated from.

13 Q. Is --

14 A. Okay.

15 Q. Is this case number used as an identifier in
16 any of these databases that is used by Aims, this
17 complaint database or this animal waste management
18 plan database?

19 A. Probably not at that time. I think they try
20 to make a note now on current stuff in the database.
21 But at that time once it was referred over, the
22 enforcement action went and then they were provided
23 with the, whatever the final document was, whether it
24 was a settlement, whether it was a default judgment,
25 whatever. We would -- then it would go back -- they

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1 would have that final copy and they would put that in
2 the file, in their compliance section on the file.

3 Q. If we wanted to identify a violation of an
4 animal waste management plan that resulted in some
5 kind of administrative action, whether it is just a
6 notice of violation or some kind of letter or a fine,
7 where -- how would we identify that particular
8 violation?

9 A. Well, the best way to do it, because so many
10 of these took place earlier, is the -- is to compare
11 the fines, the fine database, look through their
12 individual files, which unfortunately we don't have
13 scanned, so it is literally a paper review, and to
14 make an attempt to match it up in that way.

15 A lot of these violations would probably be
16 more likely based on education, and some of those
17 issues is one of the areas that we frequently fine, or
18 not getting the registration in on time, which is one
19 of our biggest problems.

20 Q. Just as a matter of percentage of violations
21 that result in fines, approximately how many would be
22 related to registration requirements or failure to get
23 education?

24 A. For poultry, let me just do a quick look
25 through and get a heads up on it. Without looking at

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1 the individual files on each of these, and some of
2 these I don't know if they are actually poultry
3 growers or not, although I recognize a number of
4 names, a large number of them are. Then I wouldn't be
5 able to speculate on that percentage, but all I can
6 say is that there is a large number of the poultry
7 ones that end up being for education, re-registration,
8 submitting applicators reports on time, some of these
9 would be applicators, and getting those kinds of
10 technical things taken care of.

11 Q. Would those type of technical violations,
12 would they be recorded in this complaint database?

13 A. No, not necessarily. It was probably
14 something that we identified through an inspection,
15 and they would be issued their warning letter to
16 correct in 30 days. Some of these would not be able
17 to be correctable.

18 Obviously if you didn't provide your litter
19 applicator report by December 31st and you still
20 didn't -- and maybe it is because you didn't fill it
21 out, then you're probably not going to be able to get
22 that corrected in 30 days.

23 And so then there would be -- and then it
24 would be referred over to legal for whatever action
25 needs to be taken at that point in time.

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1 Q. Okay. So apart from just a manual review of
2 physical files, can you tell me based on this Exhibit
3 23 how many of these animal waste management plan
4 violations would have resulted in some kind of
5 administrative action?

6 A. If you mean by administrative action legal
7 action, or do you mean administrative action, they
8 would have gotten a letter that said fix it.

9 Q. Okay.

10 A. So that's administrative action. So
11 everyone of these would have received something like
12 that.

13 Q. Okay. I'm more concerned with the pollution
14 issues that we have been discussing, and whether there
15 was some kind of determination or it was a litter,
16 alleged litter runoff or discharge issue. Is that
17 something that would be recorded in this particular
18 database?

19 A. It could be. I did a review, though,
20 through this thing. Nothing jumped out at me as being
21 that type. Most of these were like I say the
22 technical type.

23 If I saw something that referred to AWMP,
24 they need to get a new AWMP. The miscellaneous stuff
25 was renewals issues on some of these. And just -- and

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1 I kind of sat down and went through the whole thing,
2 and that's -- that's the type of violations I tended
3 to note in this -- in this form, in this portion of
4 the database.

5 Q. Okay. Correct me if I'm wrong, but as I
6 recall our previous discussion, the zero discharge or
7 zero runoff standard that we talked about was one of
8 the BMPs that was required to be contained within the
9 animal waste management plans?

10 A. Correct.

11 Q. Okay. Would a violation of that BMP be
12 contained in this database?

13 A. If it was observed at the time of the annual
14 inspection.

15 Q. Okay.

16 A. Yes.

17 Q. How, if there is such an instance, how would
18 I determine that that was the case?

19 A. Oh, it would say it in here. It would be
20 one of the items listed as criteria type, and I don't
21 know what they would list it -- I don't know all of
22 their criteria types, but they would list it in here
23 as something to that effect.

24 But the -- it is unusual for -- it would be
25 highly unusual for one of our inspectors to actually

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1 conduct water sampling or anything else on this annual
2 inspection. They tend to -- they have got to go
3 through all of their records, they have got to see if
4 there is anything awry there. It is usually several
5 hours that they sit down with the individual and get
6 these kinds of things gone through.

7 And then it is a look over the site to see
8 if there is any obvious problems, like poultry piled
9 without a berm, or a trail to the creek with poultry
10 litter dribbled all the way down, you know, that kind
11 of thing.

12 But that's going to be a cursory type review
13 to ensure. And then they make sure they have their
14 waste management plan, that it is in date. If it is
15 not in date, then they are not following probably an
16 adequate one, if it has been updated with the
17 appropriate information for the site.

18 Q. Short of going through each of these entries
19 line by line, can you tell me whether there is an
20 entry for any grower that's related to a violation of
21 that zero discharge BMP or a violation of any of the
22 other BMPs that are required under the Registered
23 Poultry Feeding Operations Act?

24 A. When I reviewed these I didn't note anything
25 that directly looked -- that was directly listed as

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1 BMP violation, or that seemed to indicate that in the
2 notes in the criteria notes on here.

3 Everything, again, I think I said that, but
4 tended to be more of the AWMP revised, doesn't have
5 one at all, needs one. Those are more what I noticed
6 in here. I don't recall seeing one in particular.

7 Q. Okay. When you said earlier, when you said
8 technical violation, you're referring more to just --

9 A. Paperwork.

10 Q. And not what they are actually doing out in
11 the field?

12 A. Right, a technical violation to me is didn't
13 get the education, only got two hours, should have had
14 three. Didn't renew on time. Didn't fill out their
15 paperwork appropriately. Didn't file their reports
16 appropriately. That's what I'm tending to talk about
17 when I look at the technical stuff. Soil and litter
18 test, technically they didn't match the right date.

19 Q. It is my understanding from your testimony,
20 that those types of issues are a large number of those
21 are also the ones that end up resulting in some kind
22 of fine being assessed?

23 A. Many of them do, yes.

24 Q. Okay. And I think that's consistent with my
25 review of these various legal files, but okay.

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1 Let's move onto Topic 10, "Identification of
2 all persons or entities who have land applied poultry
3 litter or poultry waste as that term is defined in
4 Oklahoma statutes and regulations in the IRW, whether
5 or not such persons or entity is registered, licensed
6 or certified by the state."

7 Do you have something with you today that
8 would identify all persons known by the state of
9 Oklahoma to have applied litter within the Illinois
10 River Watershed?

11 **A.** That was one of the documents I brought last
12 time.

13 **Q.** Okay.

14 **A.** Was my applicator stuff. I should have a
15 copy of it. I wouldn't be surprised if it is in this.

16 **Q.** Why don't you see if it is in the Exhibit
17 20. So if we already have it in the record, it would
18 be easier to use.

19 **A.** Yes, it is actually the first thing I come
20 across. Delaware County private applicator's listing.
21 And that's on the first page of this Exhibit 20. And
22 then it goes throughout, for Delaware, Cherokee,
23 Sequoyah and then there's the commercial applicator
24 list.

25 All commercial applicators are listed here

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1 because where they live doesn't always have a
2 relationship to where they actually land apply. And
3 we don't have in this database, we couldn't identify
4 that this guy in Westville only applies in the
5 Illinois River Watershed, but we also couldn't say the
6 guy in Miami never comes to the Illinois River
7 Watershed.

8 So it contains all commercial applicators.

9 Q. On the private applicator list, there is not
10 a sheet for Adair County? Is there simply not any
11 private applicators in Adair County?

12 A. Maybe that got left out when we copied it.
13 Is there a -- because I remember there being folks in
14 Adair.

15 Q. Did you bring the file that this was taken
16 from?

17 A. I should have, yes.

18 Q. Last time?

19 A. It should be in here. Yes, I kept this
20 stuff intact. There is Adair. Yes. Maybe it -- no,
21 it just looks like it got missed somehow. Because
22 these are all in the same order as your copy, but the
23 Adairs are just not there.

24 But, yes, I do have them.

25 Q. Okay. Can we make a copy of this and we

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1 will add it to Exhibit 20?

2 A. Okay. I will just kind of slide it in for
3 now.

4 Q. Make it 20-A or something.

5 MR. LENNINGTON: Do you want to make it a
6 separate exhibit or do you just want to add it?

7 MR. HIXON: It is fine to add it to this
8 one. It was supposed to be a part of this one.

9 THE WITNESS: Yes, it was in my stack.

10 Q. (BY MR. HIXON) These private applicators,
11 when is someone required to have a private applicator
12 license?

13 A. Private applicators are individuals who land
14 apply generally speaking on their own property. If
15 you're a grower and you land apply on your property,
16 you have to be both registered and have a private
17 applicators license.

18 If you are a person out there that purchases
19 poultry litter and you want to land apply it on your
20 own property and you do the land application, whether
21 or not you have a poultry farm on the facility, you
22 have got to have a private applicator license.

23 Q. So if a cattle operation in the Illinois
24 River Watershed wanted to apply litter to his field,
25 and he did it himself, he would have to have a private

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1 applicator license?

2 A. Applicator license, yes.

3 Q. Do these license holders, do they report the
4 amount of litter that they have applied to their
5 properties?

6 A. Yes. Each one, each private and commercial
7 applicator is supposed to provide an annual report to
8 the department. It is a annual report that's due by
9 December 31st of the calendar year, but it is for the
10 period of time of the fiscal, previous fiscal year.

11 So this year they will be sending in their
12 reports by December 31, but their time period that
13 they are going to be submitting reports for is June --
14 July 1 of '07 through June 30th of '08.

15 Q. Okay. Did you bring a report with you that
16 identifies the amount of litter spread by private or
17 commercial applicators within the Illinois River
18 Watershed?

19 A. My understanding is what you needed was the
20 totals, and so we -- this was another one we kind of
21 had to create the report, because it is not a report
22 we had run before on this.

23 But according to -- when we get the form in,
24 we get that form in and it goes into our database, and
25 we just plug in the numbers that they provide to us.

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1 Then those forms are also provided to the Oklahoma
2 Conservation Commission for their report that they put
3 together.

4 These are based on conservation district,
5 because that's how the statute requires them.
6 However, fortunately in Adair, Cherokee, Delaware and
7 Sequoyah, there is only one conservation district for
8 those borders of those counties. So it is
9 reasonably -- it is accurate towards the counties,
10 too, is the way these happen to work out.

11 Q. Is this going to be -- this is going to
12 contain the litter that's been spread outside the
13 Illinois River Watershed, because of the, only
14 portions of the watershed are located, for instance,
15 within Delaware County or Cherokee County?

16 A. This is not broken down by Illinois River
17 Watershed. We don't have that database. The
18 applicator database isn't at all broken down that way,
19 unless they happen to be a grower that we can then say
20 we did identify them that way.

21 But the applicator database is strictly
22 looking at their -- strictly getting the license
23 appropriately and making sure they provide their
24 records to us appropriately. But it is kept by
25 conservation district.

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1 Q. Okay. And this report that you have, how is
2 this broken down?

3 A. What my database guy did was he took the
4 Aims database related to -- related to the applicators
5 reports that we receive. And again, we take the
6 number they give us on that, and we punched it in.
7 Adair County, for example, litter applied, and this is
8 for the last period of time, 72,918.71 tons is what we
9 have -- is what we have found.

10 Q. Okay.

11 A. That's Adair County.

12 Q. What time period was covered by that?

13 A. This may be, let me think here. I better
14 remember how he told me he did it.

15 Q. Can I see that just while you're thinking?

16 A. Sure. I'm not sure what the time period was
17 on that. I don't recall giving him one when we worked
18 on it.

19 Q. Okay. So do you know whether this number is
20 for one year?

21 A. I'm thinking it is cumulative. But that
22 doesn't seem quite right on the tonnage. So if I
23 compare them to our conservation reports, Conservation
24 Commission District Reports, I may have a better idea
25 of that, because I can't remember how I asked him to

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1 do it.

2 Q. Do you have anything with you today that
3 would identify the amount of litter spread within
4 these conservation districts for each of the years
5 that the Waste Applicator Act has been in effect?

6 A. Well --

7 Q. For each separate year?

8 A. Yes. I don't think I asked him to do that.
9 I think that I understood it was total amount.

10 Q. Okay. Total amount over what time period?

11 A. Over what time period? Well, for the
12 database, the database has only been in existence
13 seven or eight years, at the most. Because we didn't
14 even have our first applicator reports due -- first
15 group of reports were due, I believe we didn't receive
16 any applicator reports until the end of 2000.

17 Q. Okay.

18 A. Probably.

19 Q. Let me go ahead and mark this one Exhibit
20 24 and I would ask that you go through the same
21 exercise for each of these conservation districts on
22 an annual basis and identify whether it is -- if it is
23 reported fiscal year, then, you know, it is fine to
24 have the amount of applied within these conservation
25 districts during that fiscal period, as long as it is

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1 clearly identified?

2 (Defendant's Exhibit 24 marked for
3 identification)

4 MR. LENNINGTON: Would you like us to see if
5 we can break these numbers down by year, is that what
6 you're asking.

7 MR. HIXON: Right, instead of just having
8 one cumulative number for 7 or 8 or however many years
9 it is. Have something for 2000, 2001, for each --

10 MR. LENNINGTON: We will have to talk about
11 it and maybe during a break she can call the guy --

12 THE WITNESS: I can't get it quickly, it
13 took him all day to get that.

14 MR. LENNINGTON: I think there is some
15 limitations on certain things that can be done with
16 this type of database. So we are going to have to
17 talk about whether it can actually be done.

18 MR. HIXON: Okay.

19 MR. LENNINGTON: They have the database, I
20 think.

21 MR. HIXON: We have the database.

22 THE WITNESS: Yes, you do have the database.

23 MR. HIXON: Well, I will still request it.

24 Q. (BY MR. HIXON) Okay. On this exhibit --

25 A. The only thing I know to match it up to is

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1 what the Conservation Commission put together, and
2 they do an annual report that you guys probably have
3 seen produced and applied in conservation districts.

4 So, for example, this would be February 20th
5 of 2002, and this wasn't prepared by the department,
6 but it is generated from the same reports that go into
7 that applicator. We put the data here and then they
8 get the reports to generate their report.

9 Q. It is based on the same data?

10 A. Right, right so on their report for February
11 20th of '02, this would have covered the time period
12 of July '01 to June of '02 -- no, let's back up
13 another year.

14 July of 2000 to June of '01, and Adair
15 County produced it says 13,834 and they applied 15,733
16 tons.

17 Q. Do you know how that produced number is --
18 how that is compiled? Is it an actual number, is it a
19 calculated number?

20 A. No, it is strictly a, off of those forms,
21 they identify where it was produced. The applicator
22 form, I should have one right here. Yes. Here is an
23 example, I'm looking at Dale Snider, just randomly
24 picked his up.

25 Q. What is the name of that form?

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1 **A.** This is our Soil Poultry Litter Application
2 Record Annual Report Form. And this is the form
3 everybody fills out.

4 And the fields that are on it are the
5 application site, what is the conservation district
6 that it was put in. The field name and the
7 conservation district. Legal description, so it gives
8 section, township, range and then the soil results.
9 And then it is the source of the litter and the legal
10 description and conservation district.

11 So this one was produced in the Adair County
12 conservation district as well as applied in the Adair
13 County conservation district. So it is the
14 information used to compile produced.

15 This is only reported. This is not based on
16 estimates. This is what we were actually reported.
17 It is not going to account for -- it is reported as
18 applied. It is not going to account for litter that
19 may not have been applied or that was produced, that
20 was produced here, but shipped to Arkansas on their
21 property over there. It would not account for those
22 types of things.

23 So it is by no means -- it is only what was
24 reported as produced.

25 **Q.** Okay. And would the litter that's reported

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1 as produced, is that only litter that's produced
2 within Oklahoma, or --

3 A. We only report the conservation districts.
4 So it would have only been what was produced in an
5 Oklahoma Conservation District.

6 Q. Okay.

7 A. Occasionally you will see one of those
8 reports where they actually say litter produced, and
9 it just says Arkansas, or Missouri. And that is not
10 accounted for in this -- because it wasn't identified
11 as produced in one of our conservation districts.

12 Q. That was my next question. If it was litter
13 produced in Arkansas and it was brought into Oklahoma
14 and applied --

15 A. It would show as applied.

16 Q. Okay.

17 A. But it would not show as produced.

18 Q. The Conservation Commission report that
19 you're referring to, what is that report?

20 A. This particular one is their Poultry Litter
21 and Conservation District's Report done in February of
22 '02.

23 Q. Okay. How -- do you have those reports
24 through the most recent?

25 A. I should. Let's see. What is the date on

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1 this last one? Yes, this last one was the '07 annual
2 report produced in February of this year.

3 Q. Okay. Would there be one before this 2002
4 report?

5 A. No, because that time period, as I said, as
6 I think we only started, they started keeping records
7 in -- this time period would have ended 7-31 of '01.
8 So it would have started in 2000. And that's about
9 the time that we were starting to get that portion of
10 the bill up and running.

11 Q. Okay. Let's mark that as Exhibit 25 to your
12 deposition, and can we use this copy, or do you want
13 to make copies?

14 A. Certainly. No, you can use this. You may
15 have this. Maybe not.

16 (Defendant's Exhibit 25 marked for
17 identification)

18 Q. We may, but let's just for ease, let's mark
19 this. Do these OCC reports, will they tell us how
20 much of this litter that was applied was applied on
21 property owned by a nonpoultry operation? Would it
22 tell us --

23 A. It wouldn't delineate that distinction. It
24 would -- the form has the, as I said, has the location
25 of where they got it and where it was land applied,

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1 but it is not going to have -- no, that was just
2 additional. But it is not going to say anything
3 beyond that.

4 Q. Okay. Did you bring anything with you today
5 that would tell us how much of this litter was land
6 applied on cattle operations or some other operation
7 that's not a Registered Poultry Feeding Operation or
8 CAFO?

9 A. We don't keep records in that way, that's
10 not how our -- that's not how our database works. In
11 the applicator database, we just want to know where
12 they got it and how much they put down and was it a
13 certified applicator doing the job.

14 Q. What would it take to compile that
15 information to determine how much litter was applied
16 on a poultry operation and how much litter was applied
17 on something other than a poultry operation within the
18 IRW?

19 A. I don't know that there is a way from the
20 data that we actually keep to do that, from our files
21 or from, and I don't know of anybody else that
22 compiles that kind of information.

23 The only thing I can think of is go by hand
24 and identify the section, township, range and see who
25 owns it. And if it is a grower, then it is a grower,

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1 and if it is not, it is not. But I don't know any
2 other way of doing that.

3 I can't think of any time we have ever
4 tracked it.

5 Q. That information --

6 A. Or made a field for it.

7 Q. That information is responsive, and is the
8 information that's requested in Topic 12.

9 MR. HAMMONS: Philip, as I recall, when we
10 were discussing these 30(b)(6) topics, that what you
11 guys were really wanting to know is how much litter is
12 applied in these counties, either by private
13 applicators or commercial applicators.

14 I don't ever remember saying, you know, I
15 specifically objected to the fact of having to prepare
16 someone on the land application date and location,
17 because all of that information is in the file.

18 But to have her testify as to location of
19 the poultry litter which is what I think you're asking
20 for, I don't think we agreed to that.

21 MR. HIXON: No, what I'm asking for is the
22 information that's requested in Topic 12, and that
23 includes identifying the amount of litter applied by
24 people unrelated to the poultry industry.

25 I mean the allegations that the state has

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1 made against Peterson Farms and the other defendants
2 as it were responsible for the application of all of
3 this litter that's owned by these contract growers and
4 a portion of that is sold by the contract growers to
5 other farmers, ranchers, cattle men, whomever, and
6 they use it as fertilizer on their fields.

7 And what I'm asking and what Topic 12 asks
8 for is to identify how much of that litter is being
9 used by these nonpoultry participants in this litter
10 economy, quote, unquote.

11 MR. HAMMONS: Again, what I understood what
12 our compromise on this was that we would be able, or
13 attempt to quantify or identify commercial growers,
14 private growers and with the understanding that
15 sometimes a commercial grower is a poultry grower or
16 it may not be a poultry grower, but as far as 15,000
17 tons was applied on Dairy Farmer Dave's property,
18 versus Poultry Farmer Pete's property, I think
19 that's -- I don't think we ever agreed to that.

20 MR. HIXON: Well, I mean that's what Topic
21 12 requests.

22 MR. HAMMONS: But we had discussions.

23 MR. HIXON: Who had discussions?

24 MR. HAMMONS: Scott McDaniel, myself,
25 several other people on a call, before we objected to

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1 these topics that's overly broad to have someone
2 identify the location, date of each application site,
3 each thing. There is 15 on one piece of paper for one
4 grower.

5 We sat and talked about this, and it was our
6 understanding that it would be -- we would try to
7 produce to you the amount of poultry waste produced in
8 each county by poultry growers, and if we could, or
9 the amount applied by commercial applicators, but not,
10 you know, a dairy farm versus a poultry farm.

11 MR. HIXON: You know, Trevor, the only thing
12 that's been brought today is this sheet. And this is
13 litter applied, I can't tell where it was applied, who
14 applied it and over what period of time.

15 I mean, if you have something that -- if
16 Scott agreed to something, I mean is there some
17 writing that memorializes your agreement with Scott?

18 MR. HAMMONS: He actually said that he would
19 memorialize the agreement. And it is not going to be
20 going through and identifying each land application
21 site. We did not agree to do that.

22 Now, I will grant you that we have some
23 question as to what this sheet is right here. However
24 you do have the Conservation Commission reports, and
25 we have the list of private applicators, commercial

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1 applicators. But we never agreed to do each grower
2 applied this much on this field at all. And you guys
3 agreed to that as well.

4 MR. HIXON: You know, this is the first time
5 this objection has come up in the course of this
6 deposition, and there is not any document
7 memorializing this. I mean if you want to go pull an
8 e-mail or a letter from Scott or something --

9 MR. HAMMONS: There never was one from Scott
10 back to me. We had a meet and confer with several of
11 the defendants on the phone regarding these topics,
12 and in fact we sent a letter objecting --

13 MR. HIXON: Do you have a copy of that
14 letter?

15 MR. HAMMONS: I could go find one.

16 MR. HIXON: You need to go find that because
17 there needs to be some record, otherwise this topic,
18 we need the information that we have requested.

19 MR. HAMMONS: I just want to be clear that
20 it is on the record that you want to know somebody
21 whose not a poultry grower, how much they applied,
22 where they applied, when they applied and how much
23 they applied, for each instance? Is that what you're
24 asking?

25 MR. HIXON: I'm asking for the information

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1 in Topic 12.

2 MR. HAMMONS: Okay. Let's go off of the
3 record.

4 (Short break)

5 Q. (BY MR. HIXON) Okay, Ms. Gunter, we were
6 having a discussion about where poultry litter was
7 land applied, do you recall that discussion?

8 A. Yes, sir.

9 Q. Okay. If you will pull out the sheet that
10 you were referring to, the applicator sheet?

11 A. The example form I was using?

12 Q. Yes, the example form, yes. As I recall,
13 you testified that the location, the legal description
14 of the property where the litter is applied is
15 contained on that sheet; is that correct?

16 A. Yes, it is.

17 Q. Okay. Does the state maintain a copy of the
18 animal waste management plan for each of the growers
19 within the Illinois River Watershed?

20 A. For growers?

21 Q. For the growers who are required to have --

22 A. Yes, they are required to provide a copy of
23 their updated waste management plan to us.

24 Q. Okay. Let me hand you what's been marked
25 Exhibit 16. Exhibit 16 is an animal waste management

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1 plan for W.A. Saunders. If you will turn to the
2 second page, which is actually page 3, that's marked
3 Bates number OKDA 0016182.

4 At the top of the page, paragraph C,
5 application rates, it identifies the fields and in
6 that section it identifies section, township and
7 range. Do you see that?

8 (Defendant's Exhibit 16 marked for
9 identification)

10 A. Yes, I do.

11 Q. Is that contained within all of the animal
12 waste management plans prepared in accordance with the
13 Registered Poultry Feeding Operations Act?

14 A. There should be a reference to the legal
15 description and the field numbers.

16 Q. Okay. So if there was litter spread in
17 field one, two, three, four or seven, what would be
18 placed on the applicator form presumably would be this
19 section 11, township 20 north, et cetera?

20 A. As the application site.

21 Q. As the application site?

22 A. Yes.

23 Q. And the applicator form, does it identify
24 the amount of litter that was applied?

25 A. Yes.

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1 Q. Okay. So it is conceivable that someone
2 could go through and identify the township, range in
3 the animal waste management plan and identify in those
4 applicator sheets and come up with a number that was
5 applied?

6 MR. LENNINGTON: Are you talking about
7 the -- I'm going to object to vague -- I just want it
8 clear. You're asking about the whole section, the
9 animal waste management plan talks about the whole
10 section and this talks about the whole section and
11 you're saying there is only four fields in an entire
12 section, is that your question?

13 MR. HIXON: I'm sorry, I have got a
14 Registered Poultry Feeding Operations that has an
15 animal waste management plan that identifies the
16 section, township and range.

17 MR. LENNINGTON: Which is a big area, really
18 big area.

19 MR. HIXON: And that's the same information
20 that's required to be on this applicator form, and if
21 it is applied, if the applicator, whether it is a
22 private applicator or a commercial applicator, if they
23 were going to apply poultry litter, for example, to
24 W.A. Saunders' farm, it would be applied in the
25 section, range and township that's identified in the

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1 animal waste management plan.

2 MR. LENNINGTON: Is your question suggesting
3 that that means that it was in fact applied on this
4 field? Or the field next to it or the field next to
5 it?

6 MR. HIXON: In this case, these five fields
7 are identified as the same legal description.

8 MR. LENNINGTON: Okay. Because your
9 question is -- I'm objecting because your question is
10 implying that there is only five fields in section 11,
11 township 20, range 25 east of this particular county,
12 and that if that section, township, range showed up on
13 an application, a litter applier's report, that would
14 automatically mean that that was applied to that
15 field.

16 So that's why I'm objecting is that it is
17 sort of vague and misleading. But go ahead. Sorry to
18 interrupt you.

19 THE WITNESS: I never heard a question.

20 MR. HIXON: That's because I got about
21 halfway through it and there was an objection to it.

22 THE WITNESS: Okay.

23 Q. (BY MR. HIXON) So my question is, you have
24 got the legal descriptions in the animal waste
25 management plan; is that correct?

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1 **A.** Yes.

2 **Q.** And that's required for all Registered
3 Poultry Feeding Operations within the Illinois River
4 Watershed?

5 **A.** Yes.

6 **Q.** Okay. Would an animal waste management plan
7 be required for a cattle operation within the Illinois
8 River Watershed?

9 **A.** In some cases it might be, but not through
10 the Registered Poultry Feeding Operations Act.

11 **Q.** What cases would an animal waste management
12 plan be required for a cattle operation?

13 **A.** Well, if it is an individual that's getting
14 federal funds, they may be required to obtain a
15 nutrient management plan, which is an equivalent plan
16 to engage in those federal equipped funds or whatever
17 types of federal programs there may be.

18 And so they would also have a plan of some
19 sort, which would encompass whatever nutrients they
20 are putting on their side.

21 **Q.** And would the plan identify whether it was a
22 cattle operation or a Registered Poultry Feeding
23 Operation?

24 **A.** The nutrient management plan through NRCS?

25 **Q.** If cattle operation had a animal waste

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1 management plan, would it identify what type of
2 operation it was, if it was a nonpoultry operation?

3 A. It probably would, but I think it would be
4 more dependent on what the purpose for the plan was.
5 If they got a plan for just pasture usage or whatever,
6 it may only refer to types of fertilizers available,
7 and it may refer to poultry, cattle, whatever, but it
8 may not actually say that it is a cattle operation
9 doing that.

10 But I would think in most cases it would be
11 appropriate they would include that in the plan. But
12 I can't say in all.

13 Q. Is the town -- the section, township and
14 range description that's on the applicator form, is
15 that something that's captured in the database?

16 A. It is typed in.

17 Q. Okay.

18 A. To the database.

19 Q. Is that something that you could sort or
20 search and pull something based on a section, township
21 and range?

22 A. I don't know if that particular field is one
23 of our searchable ones. This database is a little
24 different from the Registered Poultry Feeding
25 Operations database, and it is more of a -- it is more

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1 of just a log of information as much as anything.

2 So I don't -- I don't know if it is sortable
3 in all of these different ways. I just -- we don't --
4 we don't sort it for that many reasons, so our current
5 stuff only searches it for certain things.

6 Q. Okay. Back to this Exhibit 16, the section,
7 township and range that's identified here?

8 A. Wait a minute, 16, oh, this is 16, sorry.

9 Q. The animal waste management plan. If the
10 section, township and range that are identified in
11 this section C, is it correct that the only fields on
12 which Mr. Saunders is authorized to apply litter that
13 are under his animal waste management plan are
14 contained within these described section, township and
15 ranges?

16 A. Can you say that one more time?

17 Q. That the only fields that he's authorized to
18 apply litter are contained within these section,
19 township and range that are identified in the animal
20 waste management plan?

21 A. Not necessarily.

22 Q. Okay. Why not?

23 A. Well, the plan is drafted for a six year
24 time period, but if he purchases new property, in that
25 time period he may have additional property that's

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1 suitable for land application and he would note that
2 in his records, he would note that he's done his field
3 testing and those sorts of things.

4 But until he does his new revision, if he
5 bought the section next-door or something, it wouldn't
6 necessarily be reflected in this plan, because it is
7 not time to update this plan yet. But this is
8 considered a living document might be the way to put
9 it.

10 It says you can land apply a certain amount,
11 but you have got to get new field -- new soil tests,
12 which may modify that amount.

13 Q. I'm just talking about the section, township
14 and plan?

15 A. But what I'm saying about a living plan is
16 is there modifications and adjustments that are
17 expected throughout the course of that plan.

18 Q. Assuming Mr. Saunders doesn't buy any other
19 fields, the only fields that he's authorized to apply
20 litter on are these that are identified in this animal
21 waste management plan; is that correct?

22 A. These are the ones that he's identified as
23 the location that he will apply on. But I can't say
24 these are the only locations he's authorized to do so
25 without knowing a lot more about -- there may be

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1 locations on there that are okay but he didn't have
2 any intent to do so in the next ten years.

3 But I can't say that they are not
4 authorized.

5 Q. Okay. Is it possible to go through and
6 identify these fields that are identified in the
7 animal waste management plans for the Illinois River
8 Watershed and compare them to the section, township,
9 range information from those applicator sheets that
10 are entered into the ODAFF database?

11 A. Do you mean short of pulling all of the
12 files and throwing them in a big room and hiring a
13 temp employee and reads each file and compares? I
14 mean that's the only way I could see it be possible to
15 do it, because I don't know that these other things
16 are sortable, nor do they cross match with each other.

17 Q. Do you know that they can't be sorted?

18 A. I don't know -- this information on the
19 waste management plan is not logged in the database
20 with the plan in the file. So it would be an
21 impossibility for me to take these numbers and match
22 them to a database listing.

23 The only way to do that would be a by hand
24 paper listing. And that -- yes, that wouldn't be an
25 appropriate thing to do.

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1 Q. The state of Oklahoma has the information in
2 its possession through which it could identify litter
3 that's applied on a field identified in animal waste
4 management plan?

5 A. It is virtually impossible for us to do
6 that.

7 Q. Okay. Why is it virtually impossible when
8 you have the section, township and range in the animal
9 waste management plan and in the applicator report?

10 A. I mean, are we talking about we know that
11 this is from the same year as that applicator report,
12 or are we saying -- because property changes hands?

13 Q. We are just talking about identifying
14 section, township and range?

15 A. I can find the section, township and range
16 online, viewing the county records.

17 Q. Okay. Did the state of Oklahoma make any
18 attempt to match up the section, township and range in
19 the animal waste management plans to determine how
20 much litter was spread on Registered Poultry Feeding
21 Operations as opposed to other nonpoultry operations?

22 A. No, the state has not ever had the
23 wherewithal or the need to do that.

24 Q. Okay. Subject to Mr. Hammons' earlier
25 objection, we reserve our right to come back and

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1 address this topic at a later time. And it is clearly
2 what is requested in Topic 12, and the state of
3 Oklahoma has the information by which that -- those
4 numbers could be compiled, and it is my understanding
5 that the state of Oklahoma didn't make any effort to
6 compile those numbers in that way; is that correct?

7 A. The state -- the state couldn't tell from
8 doing that.

9 Q. The question was, did the state of Oklahoma
10 make any effort to compile a number of the amount of
11 litter applied on a Registered Poultry Feeding
12 Operation Act, or operation, for a nonpoultry
13 operation?

14 A. Why would we create something? I mean,
15 that's -- I mean, you wanted to know what the state
16 knows.

17 Q. That is a yes or no question?

18 A. You want to know what the state knows, and
19 I'm providing the information that the state knows on
20 this topic.

21 Q. And I have asked a yes or no question. Did
22 the state make that effort, did it not?

23 A. I don't think the state could have made that
24 effort.

25 Q. Is your testimony that the state did not

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1 make that effort?

2 A. I don't think they could have made the
3 effort.

4 Q. Okay. Did the state make that effort?

5 MR. LENNINGTON: Objection, asked and
6 answered.

7 MR. HIXON: It hasn't been answered. It is
8 a yes or no question and I have yet to receive a yes
9 or no answer.

10 MR. LENNINGTON: You can ask it, but I'm
11 going to object. You can ask the same question and
12 you're going to be harassing the witness if you keep
13 asking the same question over and over.

14 MR. HIXON: Not if I'm not getting a
15 responsive answer.

16 Q. (BY MR. HIXON) Did the state make the
17 effort, yes or no?

18 MR. LENNINGTON: Objection, vague.

19 Q. (BY MR. HIXON) We have been talking about
20 it for ten minutes, I think we know what the topic is,
21 Dan.

22 MR. LENNINGTON: Honestly, I don't know what
23 you're asking.

24 MR. HIXON: I'm asking for the information
25 that was requested in Topic 12.

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1 MR. LENNINGTON: If you have a question, you
2 can ask her. I'm not instructing her not to answer.

3 MR. HIXON: I asked the question.

4 THE WITNESS: The state made an effort to
5 provide you everything we have got, evidenced by all
6 of the boxes, all of the database, all of the written
7 productions we have provided you, and by the reports
8 that we have pulled together and the applicators. I
9 mean, we have provided you everything that we have.

10 Q. (BY MR. HIXON) I disagree, but let's move
11 on.

12 And again, we reserve our right to come back
13 and redepose Ms. Gunter on this topic, because we did
14 not get the information that we requested in Topic 12.
15 You know, if you want to address the issue with Scott
16 and confirm there was some kind of agreement not to
17 produce the information that was requested in Topic
18 12, that's fine.

19 Absent that, we reserve our light to come
20 back.

21 MR. LENNINGTON: You can reserve your right,
22 but it is our position that Mr. McDaniel orally agreed
23 to limit Topic 12.

24 MR. HIXON: That wasn't passed onto me and
25 I'm not aware of any agreement to limit it to the

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1 information that was provided in 24, which is
2 nonresponsive, and virtually useless.

3 MR. LENNINGTON: I think we have made a
4 record of our positions. I don't know what more I can
5 say than I was on a call and Scott McDaniel said that
6 Topic 12 was limited. I mean, that's our position and
7 you don't know whether or not that's your position,
8 and you have made your record and we made our record.

9 MR. HIXON: I know what my position is, I
10 have stated it on the record as well.

11 MR. LENNINGTON: Your position is that you
12 don't know whether Topic 12 has been limited. And my
13 position is it has been limited.

14 MR. HIXON: I'm requesting -- I'm not going
15 to bicker with you. I will use my time. Thank you.

16 Q. (BY MR. HIXON) Let's go to Topic 14. Can
17 you tell me what the Oklahoma Litter Market is?

18 A. Yes. A website maintained by the Oklahoma
19 State University extension.

20 Q. What is the purpose of the Oklahoma litter
21 market?

22 A. To match purchasers or potential purchasers
23 of poultry waste to potential sellers of poultry
24 waste.

25 Q. Okay. When was that, the Oklahoma Litter

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1 Market founded?

2 A. In this form, the OSU web page, it was
3 founded in about '02.

4 Q. Okay. Was there something that preceded
5 that OSU web page?

6 A. Prior to that, the Department of Agriculture
7 paid for a 1-800 number that went to our Tulsa office
8 where we maintained listings of purchasers and
9 sellers. And if you wanted to be on the list, you
10 could call that 1-800 number and put your information
11 on the list.

12 If someone was interested in buying litter,
13 they could call and request a copy of the list of
14 potential sellers. If someone was interested in
15 selling, they could call and request a list of the
16 potential purchasers.

17 Q. Okay. Does the state of Oklahoma or
18 Oklahoma State University play any part in matching up
19 the buyer and the seller?

20 A. Other than they can go -- now you can do it
21 online and go and find the names and locations. Other
22 than maintaining that information, no, that's the only
23 role is simply maintaining the information that the
24 state takes part in that section, on that topic.

25 Q. It lists potential sellers or buyers that

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1 want litter?

2 A. Right.

3 Q. Okay. Do you know how much litter is bought
4 and sold through the Oklahoma Litter Market?

5 A. Those aren't records that are kept. It is a
6 private -- once we have provided the names, then it is
7 private from there on out. The individual would
8 provide the information to the -- would contact the
9 seller directly or whatever, and they would work it
10 out on their own, on their own terms.

11 Q. That transaction is not tracked by any
12 means?

13 A. No.

14 Q. Other than what may be recorded on a
15 applicator sheet?

16 A. Right, that would be a private transaction,
17 correct.

18 Q. What is it that you brought with you today?

19 A. This document I printed it from the Oklahoma
20 Litter Market website.

21 Q. Okay. Let's go ahead and mark that Exhibit
22 26 to your deposition. If someone from Arkansas
23 wanted to buy or sell litter on the Oklahoma litter
24 market, could they list themselves?

25 (Defendant's Exhibit 26 marked for

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1 identification)

2 A. There is no restrictions to my knowledge.

3 Q. It is not limited to Oklahomans?

4 A. No, it is anyone that calls the number.

5 Q. Okay.

6 A. And wants to be involved in it.

7 Q. Okay. Can you tell me what the
8 Environmental Quality Incentive Program is?

9 A. EQIP?

10 Q. EQIP.

11 A. It is the NRCS program that's a federal
12 program through the -- through the farm bills usually
13 is where that comes through.

14 Q. Does the state of Oklahoma have any
15 involvement in the EQIP program as it pertains to
16 poultry litter or poultry operations?

17 A. I'm trying to think of what -- I mean, we
18 serve on state technical committees, we do have I
19 think representatives, members of the state do attend
20 those meetings when NRCS is determining priorities for
21 the EQIP program or any of their other programs.

22 So there may be some input from that
23 standpoint, but it is not necessarily formal input, it
24 is a meeting that everybody discusses the potentials.

25 Then --

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1 Q. Do you know if there is any litter that's
2 moved through any of the EQIP program?

3 A. I believe that there has at least at one
4 time been in some programs in various locations around
5 the state to use EQIP as a -- here is an example. I'm
6 looking at a document from Josh Payne, Ph.D. for
7 Oklahoma State University, who is the employee that
8 works on a lot of the poultry litter aspects, he helps
9 work on coordination of education and all of those
10 things.

11 And he makes reference to EQIP program of
12 provided manure transfers with continuous sign up for
13 the eastern half of Oklahoma. This article was based
14 on applications were accepted until November 1 for
15 2008 and then applications received after that day be
16 considered for fiscal year 2009, depending on farm
17 bill legislation.

18 Q. Does the state of Oklahoma administer any of
19 those litter programs through the EQIP program?

20 A. No, these are federal programs, the EQIP
21 are.

22 Q. Let's go ahead and mark this Exhibit 27
23 here. Can you tell me what the Oklahoma Conservation
24 Commission's litter transfer program is?

25 (Defendant's Exhibit 27 marked for

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1 identification)

2 A. It is actually kind of three different -- it
3 has been in evolution of several programs. The
4 current program is strictly a payment per mile for
5 transferring litter from a Illinois River, and I think
6 also some of their program goes to the Euch/Spavinaw
7 to transferring it to someone who can utilize the
8 litter, so long as they are in a nonnutrient limited
9 watershed and not in a very high groundwater nutrient
10 vulnerable area.

11 Q. Does OCC actually pay for the transportation
12 of the litter?

13 A. They pay -- the current program is three
14 cents per mile incentive for the program. But it is a
15 private sale for the transfer, for the individual to
16 work all of that out.

17 Q. The transportation itself is subsidized?

18 A. The three cents per mile, yes, that's what
19 it is currently.

20 Q. And you said the program had evolved?

21 A. Yes.

22 Q. What are the prior programs?

23 A. Well, I think the first program was, the
24 original one was an amount of money, and it was a
25 fairly large amount of money at that time, that was

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1 set up to give incentives to the hauler, which would
2 be the transportation and the grower for moving the
3 litter. And that was approximately May of '05 through
4 December of '06.

5 Q. Do you know why the program changed?

6 A. Well, the program, that particular program
7 when the money was out, then that program no longer
8 was in existence. So the second program came about,
9 and that second program they decided to rework how
10 they were compensating for it, because apparently
11 there was confusion and it was -- apparently it was --
12 they decided instead of providing the benefit to the
13 grower and the hauler, they would instead provide it
14 to the purchaser. And that's where they -- that's the
15 first time that they changed it to, I think the second
16 time around it was like a nickel per mile incentive
17 for transferring it.

18 Q. Are the programs that are administered by
19 the OCC, are these section 319 grants?

20 A. Yes.

21 Q. That they are using to fund these?

22 A. Right.

23 Q. Okay. Prior to this, were there any other
24 prior versions of the OCC's program?

25 A. Those are the only versions I have found

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1 knowledge on or found information on.

2 Q. Okay. Does the OCC track the amount of
3 litter that's carried or transported through their
4 programs?

5 A. They have a number of ways to track. For
6 the first program, I'm looking at their poultry
7 litter, this was a draft report of their poultry
8 litter transport from the Illinois River Watershed to
9 nonnutrient limited watersheds.

10 Q. Okay.

11 A. November of '07 is the version that I have
12 here.

13 Q. What time period is covered by that report?

14 A. It covers the -- this covers the original
15 group, so the funds were '02 funds. And the -- let's
16 see. That's all the intro crap. That was the one
17 that began in the May of '05 period that I referred to
18 as May of '05 through approximately December of '06.

19 Q. Okay. Let's go ahead and mark that Exhibit
20 28?

21 A. This document?

22 Q. Yes, to your deposition. Is there another
23 version of this report, a more current version, that
24 would cover the more recent programs?

25 (Defendant's Exhibit 28 marked for

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1 identification)

2 A. When I talked to them -- oh, no, this is the
3 only full report they've done. They haven't had
4 complete reports yet on the two other programs that
5 their 319 --

6 Q. Do you know what the reporting requirements
7 are under this 319 grant for these particular litter
8 hauling programs?

9 A. Once you have completed and expended all of
10 the funds and cleaned up all of your paperwork, you
11 have got to provide a complete report to EPA is who
12 these funds typically come through.

13 And so they have -- it takes a period of
14 time to prepare the final report, because they sit
15 down and gather spreadsheets, gather how much money
16 took place, who had it, that sort of thing.

17 Q. There is no set time period?

18 A. Well, the set time period is for the period
19 of the grant, but the preparation of the report will
20 be sometime after that. Once they are satisfied that
21 they have completed it properly.

22 Q. Okay. This report that you have, this
23 November 2007 report, is there a total for the amount
24 of litter that was hauled out of the Illinois River
25 Watershed?

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1 **A.** I don't know if there is a spreadsheet
2 total, but there will be in the document. Let me see.
3 The program funded the movement of 49,596 tons of
4 litter from the Illinois River Watershed into
5 nonnutrient limited or nonnutrient threatened
6 watersheds.

7 And then --

8 **Q.** And that's through the grant?

9 **A.** The first one.

10 **Q.** Okay. And that's over the entire time
11 period for that grant?

12 **A.** Correct.

13 **Q.** Okay. Can you -- it is my understanding
14 that Oklahoma provides a tax credit related to litter.
15 Can you generally explain what that program is and how
16 it works?

17 **A.** Yes, the tax credit program is for -- the
18 tax credit program is basically on your state income
19 taxes at the end of the year, if you chose to purchase
20 litter and transported it to again nonnutrient limited
21 watersheds, nonnutrient vulnerable ground water areas,
22 then you can get a five dollar per ton credit on your
23 state income taxes for any of that litter that was
24 purchased and transported.

25 **Q.** Okay. Does the state of Oklahoma provide

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1 the money for that tax credit, or is that funded by
2 some other source, such as a 319 grant?

3 A. No, I believe that's through the state.

4 Q. Okay. And that's available only to
5 purchasers?

6 A. Yes.

7 Q. Do you know how much litter has been hauled
8 under that -- the tax credit program?

9 A. I don't. It is funded at \$375,000 annually.
10 The only -- they will come to us, the tax commission
11 comes to us to verify that the individuals were indeed
12 producers and were -- I mean, did indeed come from the
13 state, number one, it has to move from those
14 locations, and also to make sure that the individual
15 applying it did do everything they are supposed to do
16 with an applicator and such as that, make sure they
17 plan to apply it properly and that indeed they did
18 take it to a nonnutrient limited watershed.

19 But the total amounts -- it took a while for
20 anybody to ever start taking advantage of this, it
21 took a while for the program to get up and running.
22 So I want to say it has only been maybe a full year or
23 two that we have even seen that information come
24 about.

25 But I don't know exactly how much they have

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1 taken, that they have actually accounted for. I do
2 know that at least up to this point there have been
3 very few inquiries of the tax commission to us. It
4 has been within, you know, 20 to 30 names at the most
5 for the state.

6 Q. Where would I get the amount of money that's
7 been paid out under this credit program?

8 A. That's one of the things that I don't have
9 in front of me, I don't think. I don't recall one of
10 my reports actually making reference to the total
11 amount of litter in that particular program. I'm
12 sorry, don't let me do that. You're watching.

13 Q. Did you talk to anybody from the Oklahoma
14 Tax Commission regarding this program?

15 A. I don't recall talking to anyone
16 specifically, and I don't recall -- I contacted a lot
17 of agencies for different materials, but I don't
18 recall that one in particular.

19 Q. If you had a load of litter, would the load
20 be eligible to receive money under the OCC's 319
21 programs and the Oklahoma tax credit program, the same
22 load of litter?

23 A. There is a possibility that it could qualify
24 for both.

25 Q. Okay. There is not anything that would

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1 exclude somebody from receiving litter --

2 A. To my knowledge, there is nothing that
3 excludes it.

4 Q. Okay. Are there any other programs or
5 incentives or initiatives that the state of Oklahoma
6 has related to the sale or transfer of litter, other
7 than the ones we have just discussed?

8 A. Those are the only ones I came across in my
9 review. I'm trying to think if there is something
10 maybe on the fringe out there.

11 Q. These would be the major ones, though?

12 A. These are certainly the major ones.

13 Q. Do you know whether the state of Oklahoma
14 has ever made an assessment of its potential liability
15 under CERCLA if poultry litter is indeed deemed to be
16 a hazardous waste for its potential arranger
17 liability?

18 MR. LENNINGTON: Objection, outside the
19 scope of the notice, calls for legal conclusion, calls
20 for attorney/client privilege communications. Calls
21 for attorney work product.

22 MR. HIXON: Calls for a yes or no answer.

23 THE WITNESS: Repeat that question, because
24 it was long.

25 Q. (BY MR. HIXON) Has the state of Oklahoma

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1 made an assessment under its potential liability under
2 CERCLA arranging for the transportation of poultry
3 litter if poultry litter is deemed to be a hazardous
4 waste?

5 A. I'm not aware of anything being provided to
6 me on that issue.

7 Q. Okay. Let's go to Topic 15. Statutes of
8 regulatory programs in place pertaining to the land
9 application of poultry litter or any poultry waste in
10 states other than Oklahoma. Are you aware that the
11 state of Arkansas has similar regulations pertaining
12 to land application of poultry litter?

13 A. I'm aware from an anecdotal, I guess would
14 be the way to put it. I'm aware that they have them,
15 I'm aware that they passed a statute a number of years
16 ago for that purpose.

17 Q. Do you know whether the state of Oklahoma
18 requested that Arkansas enact regulations pertaining
19 to litter that would ensure that the waters coming out
20 of Arkansas would comply with Oklahoma's Water Quality
21 Standards?

22 A. Did we ask?

23 Q. Yes.

24 A. I was aware of a lot of conversations
25 between the two states back in, I don't remember years

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1 anymore. But I want to say 2000, '01, '02, something
2 to that effect, discussing things that could be done
3 in the one state that might alleviate the concerns in
4 the other state.

5 And it seems like that was part of the
6 discussion. And I know there was a letter at one
7 time, kind of memorializing an agreement between the
8 states. It seems like it was the Secretary of
9 Environment, maybe that put together the letter.

10 Q. Okay.

11 A. But I just can't remember if they, the terms
12 specifically listed statutes.

13 Q. I hand you what's been marked Exhibit 22.
14 And I don't know that this is what you just referred
15 to. This is an e-mail from J. D. Strong to various
16 representatives of the state of Oklahoma in August of
17 2002. It is talking about some work that was being
18 done with ADEQ.

19 Do you think this is what you were just
20 referring to?

21 (Defendant's Exhibit 22 marked for
22 identification)

23 A. This looks like one of the things that was
24 referred to. I was copied on this one.

25 Q. Okay. Can you flip to the second page, the

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1 OCC 0610334, and look at paragraph 7. It says,
2 "Oklahoma, ODAFF or OCC needs to estimate current P
3 loads from commercial fertilizer application as well
4 as what reduction might be achieved from requiring
5 CNMPSSs for commercial fertilizer application. I
6 realize that this will be difficult if not impossible
7 but someone needs to see if they can at least develop
8 ballpark numbers. Maybe this can follow what ODEQ did
9 with septic systems, where they assumed the worst case
10 scenario."

11 Do you know whether this analysis was ever
12 performed?

13 A. I don't believe ODAFF did this, and I just
14 don't recall if OCC took it.

15 Q. Do you know who would be responsible for
16 performing this analysis at OCC or at ODAFF?

17 A. Well, our fertilizer person is Kenny Naylor,
18 and he is responsible for our entire fertilizer
19 program.

20 Q. Did Mr. Naylor receive this e-mail?

21 A. I would have discussed it with him, whether
22 he actually saw the e-mail or not, I don't know.

23 Q. Okay. It doesn't appear that he's a
24 recipient of this e-mail.

25 A. No, he typically would not be.

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1 Q. Would Mr. Naylor be the person to speak with
2 regarding whether this analysis was performed?

3 A. I would be almost positive it was not
4 performed by our people.

5 Q. Okay.

6 A. Because estimating current P loads from
7 commercial fertilizer application, we don't know all
8 of the sites where commercial fertilizer is going down
9 in the state. We know it is being produced. But as I
10 said -- yes, I don't -- I don't think that Mr. Naylor
11 would have performed that.

12 Q. Okay. Do you know who at OCC would have
13 been the person likely to perform this analysis if it
14 was indeed performed?

15 A. Not by name. Typically the people I work
16 with are in water quality, and they are the ones that
17 do sampling and those kinds of things. They may have
18 been the ones, but I'm not terribly familiar with all
19 of OCC's structure, those are just the people I
20 primarily deal with.

21 Q. Okay. So you think it would be the Water
22 Quality Division that would be responsible for this?

23 A. They are the types that typically we would
24 work with on things, related to estimating stuff.

25 Q. Okay. Let's look at paragraph 19 in this

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1 e-mail, or pardon me, paragraph 9. "OAG and OSU need
2 to proceed forward with calculating a watershed
3 specific land application rate that is tied to the
4 preliminary TMDL numbers generated by ODEQ. This will
5 serve as another benchmark for us to determine what
6 might be acceptable in terms of land application
7 rates."

8 Is this referring to the Illinois River
9 Watershed, to your knowledge?

10 A. The conversations going on at that time were
11 all regarding the Illinois River Watershed, and they
12 make reference to the 0.037 milligrams per liter
13 in item 6.

14 Q. Which is the water quality standard?

15 A. Correct, for scenic rivers. And so, yes,
16 this was all of our conversations during that time
17 were dealing with this watershed.

18 Q. Do you know whether this analysis discussed
19 in paragraph 9 was ever performed?

20 A. Well, I don't know that we ever got the
21 preliminary TMDL to the point that it was circulated
22 out there.

23 Q. So you don't know whether this analysis was
24 performed?

25 A. It looks like that step would have had to

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1 have been done first.

2 Q. Do you know who at OSU would perform that
3 analysis, if it had been performed?

4 A. There is a number of people.

5 Q. Who are those people?

6 A. If you're looking at the ag school, it would
7 be -- tell me I haven't gone blank.

8 Q. There is a Highland Zane, would he be one of
9 the ones?

10 A. He's typically more involved in soil issues
11 and application issues. He might would be involved in
12 it, though. And then there is another name I'm
13 looking for. I'm trying to think of the folks that
14 were involved in trying to develop the Eucha/Spavinaw
15 numbers whenever they were working that out through
16 the Tulsa lawsuit.

17 And I just can't think of who the OSU people
18 that were assigned to that were.

19 Q. Okay. But it could be some of those same
20 people?

21 A. I would expect it would be similar folks.

22 Q. Okay. And this proposal here is actually
23 discussing some of them that might be similar to what
24 was agreed to in the city of Tulsa lawsuit?

25 A. Not necessarily, because this -- they are

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1 talking about TMDL numbers and that wasn't necessarily
2 tied to TMDL numbers. I don't recall that being --
3 they did analysis working with the University of
4 Arkansas, OSU did.

5 But I don't think their starting point -- I
6 think they went at it at a different direction than
7 what Illinois River has typically done it.

8 Q. Okay. There is a discussion, at least it
9 appears in 2002, that there might be a land
10 application rate within the Illinois River Watershed
11 that would be acceptable to the state of Oklahoma.
12 Would you agree with that, at least as of August --

13 A. I can't say that there might be that.
14 That's something that needed to go -- they needed to
15 go through and calculate that. But to my knowledge,
16 they have never hit upon anything that's everyone is
17 comfortable with. I mean, that certainly hasn't been
18 translated towards us as something we need to be
19 implementing.

20 Q. Okay.

21 A. With our plans.

22 MR. HIXON: It has been very delightful,
23 Ms. Gunter and I will now pass you on.

24 DIRECT EXAMINATION

25 BY MR. BURNS:

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1 Q. I believe this was labeled Exhibit 21, the
2 complaint spreadsheet that you and Mr. Hixon spent a
3 good amount of time going through, when I see
4 complainant on that spreadsheet, is it typically the
5 case that -- do I need to give you a second --

6 A. I have got it right here.

7 Q. When I see complainant on that spreadsheet,
8 is it typically the case that that is someone that
9 just calls in, or how are most of those complaints
10 lodged?

11 A. They are either taken in writing or through
12 a telephone call, or e-mail.

13 Q. Do you have any sort of grasp on what the
14 percentage is, I mean is it typically a call?

15 A. Today we still probably get most of them
16 through telephone calls, yes.

17 Q. And the against column, is that just based
18 on the description that the complainant gives of the
19 offending party?

20 A. That's who they tell us it is, yes.

21 Q. So in other words, if I'm a individual in
22 Oklahoma and I live next-door to a farm that contracts
23 with Tyson Foods and I feel like something improper is
24 going on there and I call and say, hey, I want to make
25 a complaint about Tyson's farm, Tyson's name would end

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1 up on this complaint log?

2 A. Sometimes. Most of those folks, though,
3 know -- most of the people that call us know if it
4 was -- once in a while we will come across one that's
5 that way, but most of the time they seem to know that
6 they are individual, too, because they live there.

7 Q. Okay. If you were going to investigate a
8 complaint, what process do you follow to figure out
9 whether the offending party might be an integrator or
10 poultry operator or grower?

11 A. We go to the site.

12 Q. Okay. And if it is a farm operated by an
13 independent contractor and the issue involves the land
14 application of poultry litter, then in the
15 department's view the potential offending party would
16 be who?

17 A. Well, we are going to talk to the individual
18 that owns the property and find out who performed the
19 land application, how it was performed. That's where
20 we are going to start.

21 Q. Okay. The educational requirements that are
22 contained in the Oklahoma Registered Poultry Feeding
23 Operation Act, have you taught courses to growers on
24 those requirements?

25 A. In the early years, I did.

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1 Q. Okay. And did you in fact participate in a
2 video version of those courses?

3 A. I did. I don't know if they ever actually
4 got that video out in public. We had to reshoot it
5 two or three times. But I think that there may be one
6 circulating that I'm on.

7 Q. The times that you have taught those
8 courses, who's been in attendance?

9 A. Typically growers, sometimes a company farm
10 folks. Sometimes the field folks will be there, the
11 field -- the people that go for Tyson out to the
12 individual's places. But most of the times it will be
13 the growers, but a lot of the meetings usually had at
14 least a couple of those folks out also.

15 Q. To the extent that there were company
16 employees at the meetings or at the educational
17 sessions, were they required to be there under
18 Oklahoma law?

19 A. Only if they were applicators or if they
20 were operators.

21 Q. Okay?

22 A. Of the farm. So some of them may have been.

23 Q. The act, and when I refer to the act, I'm
24 talking about the Oklahoma Registered Poultry Feeding
25 Operation Act, refers to operators of poultry feeding

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1 operations, and the definition in the act operator
2 means the person who performs the daily management
3 functions associated with the poultry feeding
4 operation.

5 What in your view constitutes a daily
6 management function associated with the poultry
7 feeding operation?

8 A. That's the person that's on the ground.
9 That's the person that's going to be keeping up with
10 the birds. That's the person that's going to be
11 making sure the daily care and management of the
12 animals is taken care of. The person that coordinates
13 removing the litter, berming the litter if necessary
14 at that site, or making sure it gets transported off
15 site or takes care of potentially of the land
16 application.

17 Q. As between the poultry integrator and the
18 contract grower, who typically performs those
19 operations you just described?

20 A. In a typical contract grower arrangement,
21 normally the day-to-day person is the operator, is the
22 person that owns the property and is contracting with
23 the integrator, in most circumstances.

24 Q. Section 10-9.5(g) of the Poultry Feeding
25 Operation Act says that no integrator shall enter into

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1 any contract with a operator of a poultry feeding
2 operation who is not in compliance with requirements
3 of subsection (f) of this section. What is subsection
4 (f)?

5 A. What was the 10-what, what is the number,
6 please?

7 Q. 10-9.5 (g).

8 A. Subsection (g) is the educational course
9 requirements.

10 Q. Subsection (f) is what?

11 A. Oh, did I not say (f)?

12 Q. Yes.

13 A. (G) is referring to (f) and (f) is the
14 education requirements.

15 Q. Okay. Is there any provision in the act
16 other than section 10. -- or 10-9.5 (g) that expressly
17 applies to the poultry integrators as opposed to
18 operators or growers?

19 A. You're talking about a section with an
20 affirmative duty on the part of the integrator?

21 Q. Either an affirmative duty on the part of
22 the integrator or just expressly applies to the
23 integrator.

24 A. The only one that we have got is in section
25 10-9.11. If you go down to (f) and (g), "Any contract

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1 poultry grower determined after notice and opportunity
2 for a hearing by the department is flagrantly
3 disregarding best management practices shall result in
4 the department notifying the integrator in writing."

5 And then, "(g) the department shall notify
6 all integrators of any violations assist against a
7 operator who is under a contract growing arrangement
8 with that integrator and upon the written request of
9 the integrator notify that integrator of all
10 violations assessed and operator with whom the
11 integrator contemplates entering into a contract."

12 Q. So those two provisions reference the
13 integrator, but would you agree that those two
14 provisions don't put any affirmative obligation on the
15 integrator?

16 A. Right, that's why I clarified that question.

17 Q. And in fact the obligation is actually on
18 the department to notify?

19 A. To notify, yes.

20 Q. The provisions throughout the act that
21 require the use of BMPs, are you aware of -- are there
22 any of those provisions that expressly require the
23 poultry integrator to adopt BMPs?

24 A. Only if they are associated with a farm
25 themselves, if they are -- operating their own farm.

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1 Q. Okay. Essentially only if they are acting
2 as a operator?

3 A. Right.

4 Q. But as long as they are acting simply as an
5 integrator, the answer would be no?

6 A. Yes, the BMP section -- yes, it uses the
7 term poultry feeding operation.

8 Q. Okay. Under paragraph (f) that you just
9 pointed me to in 10-9.11, are you aware of any
10 instances in your time with the department that an
11 integrator has been notified in writing of a flagrant
12 violation?

13 A. Yes.

14 Q. Is that reflected on any of the materials we
15 have gone through today?

16 A. No, it would not be.

17 Q. Okay. Are you prepared to specifically go
18 through those?

19 A. I can give examples.

20 Q. Okay. Well, can you do that?

21 A. Examples of if we are -- we have initiated
22 enforcement action and we are not getting any response
23 from the individual, if we notify the integrator, we
24 typically get a response.

25 If we are -- we will often copy the

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1 integrator on, and it is not always, but it is usually
2 in cases where we don't get an immediate response from
3 the grower, they don't appear to be trying to fix the
4 problem or anything, then we will make sure that we
5 copy the integrator on those.

6 And then some integrators, not any of the
7 ones that are involved in this lawsuit, request these
8 things routinely, they want to know everything that
9 their growers have had come before us.

10 Q. Do you maintain a list or database of
11 instances where you have contacted the integrators?

12 A. No, we don't keep that separately from
13 anything.

14 Q. If I wanted to ascertain that, it would be
15 an exercise in going through all of the individual
16 grower files and looking to see if there is a CC --

17 A. And see if there is a copy or a CC to them,
18 yes.

19 Q. Okay. Does the department send copies to
20 the integrators of animal waste management plans that
21 are issued to contract poultry growers?

22 A. Integrators can sure certainly request it
23 through an open records request, but it is certainly
24 not something we would initiate on our own.

25 Q. Do the litter application and management

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1 provisions that are contained in the act expressly
2 apply to integrators as opposed to contract growers or
3 operators of poultry feeding operations?

4 A. I'm sorry, could you repeat that.

5 Q. Do the litter application and management
6 provisions that are in the act expressly apply to
7 integrators as opposed to contract growers or
8 operators?

9 A. It is typically going to be the poultry
10 feeding operation or the land applicator.

11 Q. As we went through the spreadsheet, there
12 were a number of occasions where the integrator was it
13 at least appeared as, what was the description, as the
14 against column, but are you aware of a single instance
15 where the department has actually issued a notice of
16 violation or taken any enforcement action against an
17 integrator related to the land application of poultry
18 litter?

19 A. The George's one that was the \$200 fine that
20 we observed them, the 15 percent slope, I think we
21 talked about that earlier this morning.

22 Q. Was that dry litter or --

23 A. It was liquid.

24 Q. Liquid. Any instance of dry application of
25 poultry litter that's resulted in an enforcement

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1 action against an integrator?

2 A. I'm going to glance through just to refresh
3 myself here. The George's one is the only one that I
4 can see that is specific to an integrator that
5 resulted in a fine that was noted here. The others
6 were individuals, it appears.

7 Q. Okay. A broader question than fines, any
8 type of warning or any type of enforcement action
9 taken against an integrator for the application of dry
10 litter?

11 A. By --

12 Q. By ODAFF.

13 A. The enforcement action, do you mean by did
14 we make recommendations or something to that effect?

15 Q. Any type of an adverse action taken by the
16 department?

17 A. Regarding litter, dry litter?

18 Q. Land application, dry litter, against an
19 integrator?

20 A. Let's just glance here. Not that I can
21 identify on here.

22 Q. You have testified throughout your
23 deposition that it would be possible for a poultry
24 grower, a poultry operator to be fully in compliance
25 with their animal waste management plan and yet still

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1 have practices that result in a discharge to waters of
2 the state and violate the Registered Poultry Feeding
3 Operations Act; is that correct?

4 A. Well, that's not exactly correct, because
5 you're not totally in compliance with your waste
6 management plan if you have runoff, because you're
7 BMPs and your waste management plan say no runoff.

8 Q. Okay.

9 A. So you couldn't be 100 percent in compliance
10 if you have runoff.

11 Q. Okay. So then it is your testimony that as
12 long as you're 100 percent in compliance with your
13 plan, you could not have violated the Registered
14 Poultry Feeding Operations Act?

15 A. Say that again. I'm sorry.

16 Q. Is it your testimony that as long as you
17 have fully complied with your animal waste management
18 plan, you could not have violated the provision of the
19 Registered Poultry Feeding Operations Act?

20 A. If you have no runoff, then you would not
21 have that violation for sure.

22 Q. Do all plans that are issued to growers say
23 in the plans somewhere you can't have any runoff?

24 A. That's one of the statutory BMPs.

25 Q. But do you know whether that actually shows

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1 up in all of the plans?

2 A. It wouldn't matter, the BMPs, whether there
3 is a plan written or not, they are still required to
4 comply with.

5 Q. So if you're a grower and you have an animal
6 waste management plan that somehow omits some of the
7 BMPs, you're still nonetheless required to figure
8 those out on your own?

9 A. No. Every single one of those growers has
10 access to copies of the law, and in fact were sent
11 copies probably several times over the years.

12 Q. So a grower would have to read their plan
13 and also read the statute?

14 A. If their drafter didn't do it properly,
15 there is a potential. But -- that's what they are
16 required to comply with.

17 Q. When you have done training for growers,
18 have you told them that they shouldn't rely on their
19 animal waste management plan?

20 A. No, I have told them they need to rely on
21 their waste management plan and the statute.

22 Q. You have told them that they need to read
23 the statute in addition to reading whatever shows up
24 in their animal waste management plan?

25 A. I recall in my section on the education

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1 programs, my section dealt with laws and rules, and we
2 went over the statute. The statute and the rules in
3 those sessions.

4 Q. Okay. Would you agree with the quote that
5 an animal waste management plan is, quote, a plan for
6 how you avoid runoff from the facility and causing
7 pollution to the waters of the state?

8 A. The plan is definitely one of those tools
9 that you're using to do that.

10 Q. Okay. But it is not the exclusive tool, is
11 that your position?

12 A. Depends on what else could be taking place
13 at the individualized facility.

14 Q. Okay. I'm not going to ask you about white
15 signs on the side of the road, I promise.

16 MR. LENNINGTON: How much more do you think
17 you have?

18 MR. BURNS: Just a couple minutes, in fact,
19 I'm probably about done.

20 Q. (BY MR. BURNS) Can you point me to any
21 specific example where the department in response to a
22 complaint or a concern about the land application of
23 dry poultry litter has done the sort of
24 upstream/downstream testing that you have discussed
25 earlier in your deposition?

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1 **A.** There is one facility that always comes to
2 mind, but it is not in that watershed, where we did
3 it. And in my mind, I can't think of a specific
4 facility in the Illinois River Watershed. It doesn't
5 mean we have never done it, I just in my head can't --
6 I'm always drawn to this one example.

7 **Q.** Are there any written guidelines anywhere or
8 criteria that the department would reference to decide
9 whether it is appropriate to do that sort of sampling?

10 **A.** No, that would be case by case, depending on
11 what our inspector discovered and how to proceed.

12 MR. BURNS: Pass the witness.

13 MS. TUCKER: I just have one quick question.
14 I just want to clarify something.

15 DIRECT EXAMINATION

16 BY MS. TUCKER:

17 **Q.** On Exhibit 21, I think you mentioned that
18 there are three CAFOS within the Illinois River
19 Watershed?

20 **A.** Uh-huh.

21 **Q.** Would the complaints about those CAFOs be
22 listed in this exhibit?

23 **A.** If they were poultry, yes.

24 MS. TUCKER: Okay. That's it.

25 MR. LENNINGTON: Anybody on the phone?

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1 MS. SOUTHERLAND: I just have one quick
2 question. Let me get a little background for my
3 question, first. This is Leslie Southerland and I'm
4 asking questions today on behalf of Cargill.

DIRECT EXAMINATION

BY MS. SOUTHERLAND:

7 Q. We spent quite a bit of time talking about
8 the outlines that you prepared, the spreadsheets that
9 reflected violations, and the question that I'm going
10 to ask you has to do with that, but I'm not interested
11 in violations of administrative things, like failure
12 to timely renew or paperwork type of errors.

13 What I would like to know is as you sit here
14 today, are you aware of any violations by a Cargill
15 grower that have resulted in any damage or injury to
16 the waters of the state of Oklahoma?

17 A. My spreadsheet doesn't identify folks as
18 Cargill or not as Cargill on this particular one. I
19 have just got the name of the individual. And there
20 are no company owned Cargill farms; is that correct?

21 Q. In the state of Oklahoma?

22 A. In the state of Oklahoma.

23 Q. That's correct. So your only information is
24 what is on those lists, and so any violations that
25 would affect the waters of the state of Oklahoma that

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1 are within the knowledge of the state of Oklahoma
2 would be reflected on those sheets and I would find
3 them there?

4 A. No. I think that's a mischaracterization.
5 What I said was our inspections would be here and our
6 complaints would be here.

7 Q. You cut out on me.

8 A. I know. The complaints would appear on
9 these lists that we went through a second ago, and
10 then we talked about the larger violation list that
11 would contain the things from our annual inspections.

12 But we are only on these sites maybe once to
13 twice a year. So I couldn't possibly say that there
14 is no other violations by Cargill folks out there that
15 they may not have been identified as a complaint or
16 identified in our annual inspection.

17 But I can't say that there is no complaints
18 or no problems with any of those facilities that have
19 resulted in runoff and water quality contamination in
20 some way, shape or form.

21 Q. Well, and I was only asking you about what
22 the state of Oklahoma was aware of. So your answer
23 is, the state of Oklahoma is not currently aware of
24 any?

25 MR. LENNINGTON: Objection,

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1 mischaracterization. Are you asking her about ODAFF
2 or this entire lawsuit?

3 MS. SOUTHERLAND: I'm asking her with
4 respect to the information that's been provided by her
5 agency as reflected on the materials that we have
6 looked at here today.

7 THE WITNESS: So you're only asking in
8 relationship to the Department of Agriculture?

9 Q. (BY MS. SOUTHERLAND) That is correct.

10 A. You're not asking in relationship to anybody
11 else?

12 A. That's with respect to the knowledge that
13 you have been asked to come here today to give as the
14 state of Oklahoma's representative about the knowledge
15 of the ODAFF.

16 A. I got confused. Can I ask a question to
17 clarify, ma'am?

18 Q. Well, why don't I just try and ask the
19 question again.

20 A. Okay.

21 Q. Because it is obviously not clear. All I
22 wanted to know was that the information that you have
23 provided today is that the information that ODAFF has
24 with respect to violations, or does that reflect the
25 current state of ODAFF's knowledge with respect to

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1 violations by any individual grower in the state of
2 Oklahoma?

3 A. It relates to what we identified through
4 complaints and annual inspections.

5 Q. Okay.

6 MS. SOUTHERLAND: Thank you very much. I
7 will pass the witness.

8 MR. SANDERS: This is Bob Sanders, I don't
9 have any questions.

10 MR. LENNINGTON: Let's take a real short
11 break.

12 (Short break)

13 MR. LENNINGTON: We are done.

14 (DEPOSITION CONCLUDED AT 3:00 P.M.)
15
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1 CERTIFICATE

2
3 STATE OF OKLAHOMA

4 SS

5 COUNTY OF OKLAHOMA

6 I, LAURA L. ROBERTSON, Certified Shorthand
7 Reporter, within and for the State of Oklahoma, do
8 hereby certify that the above-named TEENA GUNTER, was
9 by me first duly sworn to testify the truth, the whole
10 truth, and nothing but the truth, in the case
11 aforesaid; that the above and foregoing deposition was
12 by me taken in shorthand and thereafter transcribed;
13 that the same was taken OCTOBER 29, 2008, in the City
14 of Oklahoma City, County of Oklahoma, State of
15 Oklahoma, pursuant to agreement, and under the
16 stipulations hereinbefore set out; and that I am not
17 an attorney for nor relative of any of said parties or
18 otherwise interested in the event of said action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and official seal this 4TH day of November, 2008.

21
22 _____
23 LAURA L. ROBERTSON, CSR, RPR24 State of Oklahoma, No. 01472
25

[illegible]

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1 JURAT

2 STATE OF OKLAHOMA VS. TYSON FOODS

3 PR. FILE # 9833

4 STATE OF OKLAHOMA

5 SS

6 COUNTY OF OKLAHOMA

7 I, TEENA GUNTER, do hereby state under oath
8 that I have read the above and foregoing deposition in
9 its entirety and that the same is a full, true and
10 correct transcription of my testimony so given at said
11 time and place, except for the corrections noted.

12
13 _____
14 TEENA GUNTER

15 Subscribed and sworn to before me, the
16 Notary Public in and for the State of Oklahoma, by
17 said witness, _____, on this,
18 the ____ day of _____, 2008.

19
20 _____
21 NOTARY PUBLIC

22 My Commission Expires: _____

23 (LLR)PR FILE # 9833
24
25

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